WAR IN DISGUISE;

OR,

THE FRAUDS

OF THE

NEUTRAL FLAGS.

THE THIRD EDITION.

LONDON:

PRINTED BY C. WHITTINGHAM,
Dean Street;

AND SOLD BY J. HATCHARD, PICCADILLY; AND
J. BUTTERWORTH, FLEET-STREET.

1806.

PREFACE

TO THE

FIRST EDITION.

THOUGH the following sheets have been written and sent to press in considerable haste, on account of some temporary considerations which add to the immediate importance of their subject, the author has spared no pains that could tend to guard his statements from mistake. His facts are, for the most part, derived, as the reader will perceive, from those authentic and original sources of information, the records of our courts of prize: and it may therefore perhaps be surmised, that some practitioner in those courts, if not the author of the argument, has at least contributed his aid, in furnishing premises for its use.

Adverting to the probability of such a conjecture, and to an erroneous notion which he knows to be very prevalent, namely, that the practitioners in the admiralty courts have an interest

opposite to the pretensions of neutral merchants, he thinks it right to guard both his facts and his opinions against this source of jealousy, by one brief remark—contests in the prize jurisdiction arise almost exclusively from claims of property preferred by neutrals; and therefore, the business of the prize courts, would obviously be impaired, not extended, by narrowing the legal confines of the neutral flags.

If the intelligent reader should stand in no need of this information, he will still feel such caution in an anonymous writer, not to be excessive; for however sacred a national cause may be, it is become too common a rule, to suppose that no man exerts himself in it from a public motive, if a private one can possibly be surmised.

October 18*th*, 1805.

PREFACE

TO THE

SECOND EDITION.

ON the same day on which the first impression of the following sheets issued from the press, an event took place off Cape Trafalgar, which in the eyes of many, perhaps, may have diminished the importance of their general subject; and which has certainly taken from some of the facts and reflections contained in them, a part of their original interest. Our immortal Nelson, and his brave successor in command, have materially thrown back the naval preparations of Buonaparte, and dashed his rising hopes of "ships, colonies, and commerce."

The gallant Sir Richard Strachan has since given the Usurper another proof, that more than equality of force, and more even than intrepidity of conduct, is necessary to protect his flag from the most signal and entire defeats, in a conflict with British seamen: and the general result is, not only a great increase of national glory, but a most important deduction from some of the dangers, to which the following pages relate.

But enough of peril, as well as mischief, still arises from the present abuses of neutral privilege, to make a longer submission to them highly dangerous and imprudent.

Let us not be so ungrateful, as to consider less anxiously the rights and interests of our brave seamen, because their heroic exploits have improved our security; nor let the glorious dying donation of Nelson to his country prove, like a rich legacy to a prodigal, a pernicious gift, by confirming us in the waste of our maritime patrimony, and thereby insuring our ruin.

An Appendix is added to this Edition, containing some further facts, evidence, and illustrations, as well as a few explanatory remarks. Some of each might have properly made part of the text; but as the latter was thought to require scarcely any material alterations, it seemed fairer towards the purchasers of the First Edition, to place all this new matter in an Appendix, which they may buy separate from the work.

Dec. 19, 1805.

PREFACE

TO THE

PRESENT EDITION.

THE grand events, and political reverses, of this extraordinary æra, succeed each other so rapidly, that they outstrip the speed of the press; and every argument on national affairs that turns on their existing position, is in danger of being antiquated before it can be read; or at least, before it can be deliberately examined by the public.

The grand subject of the following sheets, however, is of no fugitive nature, or momentary interest.

The capitulation of Ulm, the battle of Austerlitz, and the peace of Presburgh, have only made the maritime rights of England more important, and their immediate assertion more indispensably necessary, than before, to our safety and national existence.

Though much of great moment might now be added to this little work, the change of circumstances demands no omissions or corrections in it, except in the form of some passages not at all essential to the argument, which relate to situations that no longer exist, and public characters now lost to their country.

The author nevertheless intended to revise and alter the pamphlet before it was reprinted, but found it impossible to take time enough from his private avocations for the purpose, when a great demand for the work, now out of print, and the urgent importance of its subject, forbad his delaying any longer to send it again to the press. The text therefore will be found entirely the same with that of the second edition.

Feb. 21, 1806.

ERRATA.

Page 4, line 13, for natives *read* navies.
—— 124, line 16, for important read impotent.

WAR IN DISGUISE,

&c.

THE hope of Peace, which long, though faintly, gleamed from the North, has vanished; the political atmosphere of Europe is become darker than ever; and the storm menaces a wider range, as well as a lengthened duration.

At such a period, it is natural to cast forward an anxious glance toward the approaching events of war, and to calculate anew the chances of a happy or disastrous issue of this momentous contest: but it is wise also to look backward, to review the plan on which the war has hitherto been conducted, and inquire, whether experience has not proved it to be in some points, erroneous or defective.

The season seems favourable for improvement, especially in our offensive measures, since new

relations will, in all probability, demand an important change in them; while the acquisition of allies, however powerful and active, will diminish in no degree the duty of putting forth our utmost exertions.

Fatal might be that assistance in the war, which should lead us to cherish less carefully our own independent means of annoyance or defence. The arch enemy of the civilized world, in the prospect of having a new confederacy to contend with, like Satan when opposed to the angelic phalanx, is "collecting all his might," and seems to be preparing, for his continental foes at least, an impetuous attack; nor are their preparations of a character less decisive——

"One stroke they aim,
"That may determine, and not need repeat."

A single campaign, if disastrous to our allies, may realise some of the late threats of Buonaparte. He may acquire "a new line of coast, new ports, "new countries," and then, he fairly tells us the consequence—"the defeat of our confederates "would be reflected back upon ourselves— "would leave France more at liberty than ever "to turn her whole attention to her war with "this country, and to employ against us still augmented means of annoyance;" it would render our dangers, as he truly says, "more imminent,"

though, I trust, he is mistaken in the insulting conclusion, that it would "insure our fall *."

The plan which this exasperated enemy has formed for our destruction, is of a nature far more formidable than that which he ostentatiously displayed. The flotilla at Boulogne, and the army of the coast, have chiefly excited our attention; but the restitution of his regular marine, and the increase of the confederated navies, have been the Usurper's more rational dependence, and the means of war which he has been indefatigably labouring to provide. Enraged at the interruption of this plan by his quarrel with Austria, he now avows in his complaints, its real nature and magnitude.—He asserts to the Germanic Diet, "that he has been employing all the resources "of his empire, to construct fleets, to form his "marine, and to improve his ports †;" nor is the important fact unfounded, though alleged by Buonaparte.

These dangerous efforts may be in some measure diverted by the new continental war; but they will not be wholly suspended; and should we again be left singly to sustain the contest,

* See an official article in the Moniteur of August 16th or 17th copied into the London papers of the 28th.

† Paper presented by M. Bacher to the Diet of Ratisbon, Moniteur of September 11th.

they will, of course, be resumed on their former scale, with renovated vigour and effect.

In preparations like these, consist the chief danger, not only of England, but of Europe; for the fall of this country, or what would be the same in effect, the loss, at this perilous conjuncture, of our superiority at sea, would remove from before the ambition of France almost every obstacle by which its march to universal empire could be finally impeded.

Nor let us proudly disdain to suppose the possibility of such a reverse. Let us reflect what the natives of France, Spain, and Holland once were; let us consider that these countries form but a part of those vast maritime regions, the united resources of which are now at the command of the same energetic government *; and if these considerations are not enough to repel a dangerous confidence, let those great maritime advantages of the enemy, which the following pages will expose, be added to the large account; for I propose to shew, in the encroachments and frauds of the neutral flags, a nursery and a refuge of the confederated navies; as well as the secret conduits of a large part of those imperial resources, the pernicious application of

* Genoa alone, it is computed, can supply 10,000 able seamen.

which to the restitution of his marine, the Usurper has lately boasted—I propose to shew in them his best hopes in a naval war; as well as channels of a revenue, which sustains the ambition of France, and prolongs the miseries of Europe.

In the retrospect of the last war, and of the progress we have yet made in the present, one singular fact immediately arrests the attention.

The finances of France appear scarcely to be impaired, much less exhausted, by her enormous military establishments, and extensive enterprizes, notwithstanding the ruin so long apparently imposed on her commerce. Poverty, the ordinary sedative of modern ambition, the common peace-maker between exasperated nations, seems no longer to be the growth of war.

The humblest reader in this land of politicians, if he has raised his eyes so high as to the lore of Poor Robin's Almanack, has learned that—"War begets poverty, poverty peace, &c."; but now, he may reasonably doubt the truth of this simple pedigree; while the statesman, must be staggered to find the first principles of his art shaken by this singular case.

In fact, political writers have been greatly embarrassed with it; and have laboured to account for it by the unprecedented nature of the interior situation and policy of France, or from the rapacious conduct of her armies; but none of these

theories were quite satisfactory when promulged; and they have since, either been shaken by the failure of those prospective consequences which were drawn from them, or have been found inadequate to explain the new and extended difficulties of the case.

Let ample credit be taken for revolutionary confiscations at home, and military rapine abroad, for the open subsidies, or secret contributions of allies, and for the gifts or loans extorted from neutral powers, by invasion or the menace of war; still the aggregate amount, however enormous in the eye of justice and humanity, must be small when compared to the prodigious expences of France.

In aid of that ordinary revenue, of which commerce was the most copious source, these extraordinary supplies may, indeed, be thought to have sufficed; but when we suppose the commercial and colonial resources of France to have been ruined by our hostilities during a period of near twelve successive years, the brief term of the late peace excepted; and when we remember that she has not only sustained, during a still longer period, and with scarcely any cessation *, a war arduous and costly beyond all example, but has fed, in

* A most expensive contest with the negroes in the West Indies, filled up the whole interval between the last and present war.

addition to her military myriads, those numerous swarms of needy and rapacious upstarts, who have successively fastened on her treasury, and fattened by its spoil; I say, when these exhausting circumstances are taken into the account, the adequacy of the supply to the expenditure, seems, notwithstanding the guilty resources which have been mentioned, a paradox hard to explain. Were the ordinary sources of revenue really lost, those casual aids could no more maintain the vast interior and exterior expences of France, than the autumnal rains in Abyssinia could fill the channel of the Nile, and enable it still to inundate the plains of Egypt, if its native stream were drawn off.

Besides, the commerce and the colonial resources of Spain and Holland are, like those of France herself, apparently ruined by the war.—When, therefore, we calculate on contributions from these allies, this common draw-back on their finances should diminish our general estimate.

If we look back on the wars that preceded the last, the difficulties in this subject will be enhanced.

To impoverish our enemies, used, in our former contests with France and Spain, to be a sure effect of our hostilities; and its extent was always proportionate to that of its grand instrument, our

superiority at sea. We distressed their trade, we intercepted the produce of their colonies, and thus exhausted their treasuries, by cutting off their chief sources of revenue, as the philosopher proposed to dry up the sea, by draining the rivers that fed it. By the same means, their expenditure was immensely increased, and wasted in defensive purposes. They were obliged to maintain fleets in distant parts of the world, and to furnish strong convoys for the protection of their intercourse with their colonies, both on the outward and homeward voyages. Again, the frequent capture of these convoys, while it enriched our seamen, and by the increase of import duties aided our revenue, obliged our enemies, at a fresh expence, to repair their loss of ships; and when a convoy outward-bound, was the subject of capture, compelled them either to dispatch duplicate supplies in the same season, at the risk of new disasters, or to leave their colonies in distress, and forfeit the benefit of their crops for the year.

In short, their transmarine possessions became expensive incumbrances, rather than sources of revenue; and through the iteration of such losses, more than by our naval victories, or colonial conquests, the house of Bourbon was vanquished by the masters of the sea.

Have we then lost the triumphant means of

such effectual warfare; or have the ancient fields of victory been neglected?

Neither such a misfortune, nor such folly, can be alleged. Never was our maritime superiority more decisive than in the last and present war. We are still the unresisted masters of every sea; and the open intercourse of our enemies with their colonies, was never so completely precluded; yet we do not hear that the merchants of France, Spain, and Holland are ruined, or that their colonies are distressed, much less that their exchequers are empty.

The true solution of these seeming difficulties is this—The commercial, and colonial interests of our enemies, are now ruined in appearance only, not in reality. They seem to have retreated from the ocean, and to have abandoned the ports of their colonies; but it is a mere *ruse de guerre*—They have, in effect, for the most part, only changed their flags, chartered many vessels really neutral, and altered a little the former routes of their trade. Their transmarine sources of revenue, have not been for a moment destroyed by our hostilities, and at present are scarcely impaired.

Let it not, however, be supposed, that the protection of the trade, and the revenue of an enemy, from the fair effects of our arms, is the only prejudice we have sustained by the abuse of

the neutral flag. To the same pestilent cause, are to be ascribed various other direct and collateral disadvantages, the effects of which we have severely felt in the late and present war, and which now menace consequences still more pernicious, both to us, and our allies. Hitherto we have suffered the grossest invasions of our belligerent rights, warrantably if not wisely; for the cost was all our own; and while the enemy totally abandoned the care of his marine, the sacrifice could more safely be made; but now, when he is eagerly intent on the restitution of his navy, and when other powers have gallantly stood forth to stem the torrent of French ambition, the assertion of our maritime rights is become a duty to them as well as to ourselves: for our contribution to an offensive war must be weak, or far less than may justly be expected from such an ally as Great Britain; while the shield of an insidious neutrality is cast between the enemy, and the sword of our naval power.

In the hope of contributing to the correction of this great evil, I propose to consider—

1st. Its origin, nature, and extent.

2d. The remedy, and the right of applying it.

3d. The prudence of that resort.

There are few political subjects more important, and few, perhaps, less generally understood by the intelligent part of the community, than

the nature of that neutral commerce, which has lately in some measure excited the public attention, in consequence of the invectives of Buonaparte, and the complaints of the American merchants. The *Moniteur* asserts, that we have declared sugar and coffee to be contraband of war*, and some of our own newspapers, in their accounts of conferences supposed to have taken place between the minister, and the American resident, are scarcely nearer the truth. Our government has been stated to have recalled orders, which never issued, and to have promised concessions, which I believe were never required.

To shew what the subject of controversy, if any controversy actually now depends between the two nations, may probably be, as well as to make the abuses which I have undertaken to delineate more intelligible, I must begin with stating some important historical facts.

The colonizing powers of Europe, it is well known, have always monopolized the trade of their respective colonies; allowing no supplies to be carried to them under any foreign flag, or on account of any foreign importers; and prohibiting the exportation of their produce in foreign ships, or to any foreign country, till it has

* Moniteur of August 16th: London newspapers of the 27th.

been previously brought into the ports of the parent state.—Such, with a few trivial and temporary exceptions, has been the universal system in time of peace; and, on a close adherence to this system, the value of colonies in the new world, has been supposed wholly to depend.

In the war which commenced in the year 1756, and was ended by the peace of 1763, France, being hard pressed by our maritime superiority, and unable with safety, either to send the requisite supplies to her West India Islands, or to bring their produce to the European market, under her own mercantile flag, resorted to the expedient of relaxing her colonial monopoly; and admitted neutral vessels, under certain restrictions, to carry the produce of those islands, to French or foreign ports in Europe. Of course it was so carried, either really or ostensibly, on neutral account; the object being to avoid capture on the passage.

But the prize courts of Great Britain, regarding this new trade as unwarranted by the rights of neutrality, condemned such vessels as were captured while engaged in it, together with their cargoes; however clearly the property of both might appear to be in those neutral merchants, on whose behalf they were claimed.

As these vessels were admitted to a trade, in which, prior to the war, French bottoms only could be employed, they were considered as

made French by adoption: but the substantial principle of the rule of judgment was this—"that a neutral has no right to deliver a belligerent from the pressure of his enemy's hostilities, by trading with his colonies in time of war in a way that was prohibited in time of peace."

When the facts which I would submit to the attention of the reader are fully before him, the justice and importance of this limitation of neutral commerce, which has sometimes been called, "the rule of the war, 1756," will be better understood. Yet a general preliminary account of the reasons on which it is founded, seems necessary to the right apprehension of some of those historical facts; I give it, therefore, in the language of one, whose ideas it is always injurious to quote in any words but his own.

"The general rule is, that the neutral has "a right to carry on, in time of war, his ac-"customed trade, to the utmost extent of which "that accustomed trade is capable. Very differ-"ent is the case of a trade which the neutral has "never possessed, which he holds by no title of "use and habit in times of peace; and which, "in fact, he can obtain in war, by no other title, "than by the success of the one belligerent "against the other, and at the expence of that "very belligerent under whose success he sets "up his title; and such I take to be the colonial "trade, generally speaking.

"What is the colonial trade, generally speak-"ing? It is a trade generally shut up to the ex-"clusive use of the mother country, to which the "colony belongs; and this to a double use—the "one, that of supplying a market for the con-"sumption of native commodities, and the other, "of furnishing to the mother country the peculiar "commodities of the colonial regions: to these "two purposes of the mother country, the gene-"ral policy respecting colonies belonging to the "states of Europe, has restricted them.

"With respect to other countries, generally "speaking, the colony has no existence. It is "possible that indirectly, and remotely, such "colonies may affect the commerce of other "countries. The manufactures of Germany, "may find their way into Jamaica or Guada-"loupe, and the sugar of Jamaica or Guada-"loupe, into the interior parts of Germany; but "as to any direct communication or advantage "resulting therefrom, Guadaloupe and Jamaica "are no more to Germany, than if they were "settlements in the mountains of the moon. "To commercial purposes they are not in the "same planet. If they were annihilated, it would "make no chasm in the commercial map of Ham-"burgh. If Guadaloupe could be sunk in the sea, "by the effect of hostility at the beginning of a "war, it would be a mighty loss to France, as

" Jamaica would be to England, if it could be " made the subject of a similar act of violence; " but such events would find their way into the " chronicles of other countries, as events of dis- " interested curiosity, and nothing more.

" Upon the interruption of a war, what are the " rights of belligerents and neutrals respectively, " regarding such places? It is an indubitable " right of the belligerent to possess himself of " such places, as of any other possession of his " enemy. This is his common right; but he has " the certain means of carrying such a right into " effect, if he has a decided superiority at sea. " Such colonies are dependent for their existence, " as colonies, on foreign supplies; if they cannot " be supplied and defended, they must fall to " the belligerent of course; and if the belligerent " chooses to apply his means to such an object, " what right has a third party, perfectly neutral, " to step in and prevent the execution? No exist- " ing interest of his, is affected by it; he can have " no right to apply to his own use the beneficial " consequences of the mere act of the belligerent, " and to say, 'True it is you have, by force of " arms, forced such places out of the exclusive " possession of the enemy, but I will share the " benefits of the conquest, and by sharing its be- " nefits, prevent its progress. You have in effect, " and by lawful means, turned the enemy out of

"the possession which he had exclusively main-
"tained against the whole world, and with which
"we had never presumed to interfere; but we
"will interpose to prevent his absolute surrender,
"by the means of that very opening, which the
"prevalence of your arms alone has effected:—
"supplies shall be sent, and their products shall
"be exported: you have lawfully destroyed his
"monopoly, but you shall not be permitted to
"possess it yourself; we insist to share the fruits
"of your victories; and your blood and treasure
"have been expended, not for your own interest,
"but for the common benefit of others.'

"Upon these grounds, it cannot be contended
"to be a right of neutrals, to intrude into a com-
"merce which had been uniformly shut against
"them, and which is now forced open merely by
"the pressure of war; for when the enemy, un-
"der an entire inability to supply his colonies,
"and to export their products, affects to open
"them to neutrals, it is not his will, but his ne-
"cessity, that changes the system; that change
"is the direct and unavoidable consequence of
"the compulsion of war; it is a measure not of
"French councils, but of British force*."

* Judgment of Sir William Scott, in the case of the Immanuel, at the Admiralty, Nov. 1799.

I quote from the second volume of the Reports of Dr. Ro-

Such were the principles of a rule first practically established by the Supreme Tribunal of Prize during the war of 1756, only because the case which demanded its application then first occurred; and it ought to be added, that the decisions of that tribunal, at the same period, were justly celebrated throughout Europe for their equity and wisdom *.

After France became a party to the American war, some captures were made, to which the same rule of law might, perhaps, in strictness, have been applied: for that power had again opened, in some degree, the ports of her West India islands, to the ships of neutral powers. In this case, however, the measure preceded the commencement of her hostilities with Great Britain; and it was therefore speciously represented on the part of the neutral claimants, as a genuine

binson; a work of transcendent value; and which will rise in the estimation of Europe and America, in proportion as the rights and duties of nations are better known and respected. It repays the attention of the English lawyer, statesman, and scholar, not only by legal and political information of a highly important kind, and which is no where else to be so fully and correctly obtained; but by exhibiting some of the happiest models of a chaste judicial eloquence.

* See Blackstone's Commentaries, Vol. III. 70; Montesquieu's Letters, 5th March, 1753; and Vattel's Law of Nations, Book II. c. 7. s. 84.

and permanent change in the commercial system of the enemy, by which they had a right to profit. There was, in fact, some ground for believing that the French ministry of that day had adopted new maxims of colonial policy, which novelty, and an apparent liberality of principle, concurred to recommend. The case in other respects also was much weaker than that of the war of 1756; for our enemies, during the American contest, were never so inferior at sea, as to be unable to protect, in a great measure, their colonial trade from our hostilities. At some periods, they even possessed a naval superiority; especially in the West Indian seas; where, in consequence, some of our most valuable islands fell into their hands, and were retained by them till the peace. France, therefore, could scarcely be said, in this case, to have rescued herself by the relaxation of her colonial system from actual distress, the effect of a maritime war.

It was a measure of convenience, no doubt, otherwise it would not have been adopted: but it was not an expedient which the pressure of our hostilities had made absolutely necessary. The distinction which I have first mentioned, however, was that which was principally insisted upon, in the leading cases of this class; and it was chiefly, if not exclusively, on that ground

that the ships in question were restored by our Supreme Tribunal of Prize*.

Perhaps the political difficulties of the day, especially the powerful, though injurious, influence of the first armed neutrality, may have had some weight in those decisions. But whatever the motives were, the rule of the war 1756 was not avowedly departed from; much less expressly reversed. The most that can be alleged is, that in a case which, notwithstanding the distinctions above mentioned, may be possibly thought to have warranted the application of that rule, it was not at this time applied.

The instant resumption of the colonial monopoly by the government of France as soon as the sword was sheathed, proved the fallacy of that expectation on which the indulgence had been claimed; yet in the next war, which was our late arduous contest with that country, the enemy reverted to his former policy, without limitation or disguise.—Despairing of being able to dispute with us the dominion of the sea, the Republic threw wide open to every pacific flag, all the ports of her colonies; some of which had been, in fact, partially opened a short time before the commencement of hostilities, by the lo-

* Cases of the Tiger, and the Copenhagen, at the Cockpit, in 1781.

cal revolutionary governments; and the neutral merchants immediately rushed in with avidity, to reap the offered harvest.

Our government, on notice of the general fact, adopted with promptitude the course which it seemed proper to take. On the 6th of November, 1793, a royal instruction to the commanders of his Majesty's ships of war and privateers, was issued, ordering them "to stop and detain for law-"ful adjudication, all vessels laden with goods "the produce of any French colony, or carrying "provisions or other supplies for the use of any "such colony."

A new power had now arisen on the western shore of the Atlantic, whose position, and maritime spirit, were calculated to give new and vast importance to every question of neutral rights; especially in the American seas. The merchants of the United States, were the first, and by far the most enterprising adventurers in the new field that was opened to neutrals in the Antilles, and the ports of the French islands were speedily crowded with their vessels.

Of course, the cargoes they received there, as well as those they delivered, were all declared by their papers to be neutral property; but when instead of rum and molasses, the ordinary and ample exchange in the West India markets for the provisions and lumber of America, the neu-

tral ship owners pretended to have acquired, in barter for those cheap and bulky commodities, full cargoes of sugar and coffee; the blindest credulity could scarcely give credit to the tale. It was evident that the flag of the United States was, for the most part, used to protect the property of the French planter, not for the American merchant.

The royal instruction, nevertheless, seemed to operate severely against the new-born neutral power. Great numbers of ships, under American colours, were taken in the West Indies, and condemned by the Vice-Admiralty Courts.

The fraudulent pretences of neutral property in the cargoes, were in general so gross, being contrived by men at that time inexpert in such business, that a great part of these prizes might have been condemned on the most satisfactory grounds as hostile property, had the proper examinations taken place. But the Vice-Admiralty Courts, which at that time were very badly constituted, regarded the illegality of the trade, as an infallible ground of decision; and therefore were grossly remiss in taking and preserving the evidence on the point of property. In many cases, they proceeded no further in putting the standing interrogatories to the persons usually examined, than was necessary to obtain from them an avowal of the place of shipment or destination. The cap-

tors, influenced by the same reliance on the rule of law, neglected to search for concealed papers; and those documents which the masters thought fit to produce, were often given back to them at their request, without the preservation of a copy, or any minute of their nature or contents: irregularities, which proved in the sequel highly injurious to the captors, and a cover for fraudulent claims.

It is needless to state particularly, the disputes that ensued between our government and the neutral powers, or the amicable arrangements by which they were terminated; as these facts are sufficiently known. It is however proper to remark, that nothing was expressly settled by any convention, respecting the lawfulness of neutral commerce with the colonies of a belligerent state; nor were any concessions made, whereby this country was in any degree precluded from asserting the rule of the war of 1756, at any subsequent period, to its utmost practical extent.

It was agreed, that all the sentences of condemnation in controversy should be submitted to the revision of the appellate jurisdiction; but the instruction complained of was in January, 1794, so far repealed, that instead of the comprehensive order therein contained, the direction only was to seize "such vessels as were laden with goods the produce of the French West India

Islands, and coming directly from any port of the said islands to Europe."

The latter instruction remained in force till January, 1798, when a new one was substituted, which remained unrevoked to the end of the war. By this last Royal Order, a further relaxation of the rule of law was introduced, in consideration, as the preamble expressly recited, of the existing state of our own commerce and that of neutral countries, and the new direction was to bring in for lawful adjudication all "vessels laden "with the produce of any island or settlement "of France, Spain, or Holland; and coming "directly from any port of the said island or set-"tlement to any port in Europe, not being a "port of this kingdom, or of the country to "which the vessel, being neutral, should be-"long." In other words, European neutrals, might, without being liable to capture under this last instruction, bring the pruduce of the hostile colonies, directly from thence, to ports of their own country; and either these, or the citizens of the United States, might now carry such produce directly to England; either of which voyages would have subjected the ship to seizure under the Instruction of 1794.

The decisions of the Admiralty Courts, and of the Lords Commissioners of Appeals, on this interesting subject, next demand our notice.

Royal Instructions, from the time of their promulgation, of course, become law to all executive officers acting under his Majesty's commission, so as absolutely to direct their conduct, in relation, either to the enemy, or the neutral flag. Their legislative force in the prize court also, will not be disputed; except that if a royal order could be supposed to militate plainly against the rights of neutral subjects, as founded on the acknowledged law of nations, the judge, it may be contended, ought not to yield obedience; but when the sovereign only interposes to remit such belligerent rights, as he might lawfully enforce, there can be no room for any such questions; for, "*volenti non fit injuria*," and the captor can have no rights, but such as he derives from the sovereign, whose commission he bears.

It results from these principles, that whether a judgment by the prize court, condemning property claimed as neutral, but captured pursuant to a prohibitory royal instruction, does or does not amount to a positive declaration of the opinion of that tribunal, on the principle of the prohibition itself; the restitution of property so claimed, in pursuance of a permissive instruction, clearly is no affirmation that by the general principles of the law of nations, independently of the will of the Sovereign, the captured property ought to have been restored.

If this remark be kept in view, it will be found that the Admiralty Court, and the Lords Commissioners, were so far from impeaching during the late war, by any of their decisions, the rule of the war 1756, that they, on the contrary, adhered firmly to the sense of their predecessors, the judges of that period. They condemned all vessels and cargoes, taken in voyages that fell within the prohibitory intent of the existing instruction, which was so far practically pursuant to that rule; nor did they admit in such decisions expressly to advert to the rule itself, and to declare that they considered it as founded on most incontestible principles of the law of nations. On the other hand, they restored such neutral property as was captured in the course of a voyage allowed by the existing instruction; expressly on the ground of that voluntary relaxation of the former rule of law, which his Majesty had been pleased to introduce.

It should here be observed, that these royal orders were all couched in directory, not in prohibitory terms; also, that in none of them is any branch of the neutral intercourse with the colonies of our enemies, expressly permitted. But when the order of November, 1793, to seize all vessels bringing produce from the hostile colonies, was revoked by that of January, 1794, and in lieu thereof, a direction was given to seize such

vessels when bound to Europe, an indulgence to neutral vessels carrying such cargoes to other parts of the world, was plainly implied: and in like manner, when the instruction of 1798, still further narrowed the prohibitory effect of the direction, confining it to vessels bound to countries in Europe not their own, with the exception of Great Britain, the trade to their own ports, and to ports of this kingdom, was by clear implication permitted.

Their lordships, and the judge of the court of admiralty, also followed these distinctions into fair analogies, in respect of the outward voyage. This branch of the trade, was left unnoticed in the two latter instructions; but as that of 1793, which placed the carrying supplies to a hostile colony, on the same footing with the bringing away its produce, had been generally revoked, it would have been unreasonable and inconsistent not to admit, that a neutral vessel might allowably go to the colony, from the same port, to which she was now allowed to carry its produce. Such outward voyages therefore were held to be within the clear meaning of the relaxation.

On the other hand, when neither the letter, nor spirit of the royal instructions, could fairly be construed to have permitted the particular branch of this commerce with the hostile colonies, in respect of which a question arose, it was always held by those tribunals to be illegal. Thus, a

voyage from any hostile country, whether in Europe or elsewhere, to any hostile colony; or, *vice versa;* the voyage of an American from a hostile colony to any part in Europe, except Great Britain; the voyage of a Dane or Swede from any hostile colony to the United States of America, and their respective converses, have all been held to be contrary to the law of war, and have induced the condemnation both of the ships and cargoes*.

In short, the doctrine uniformly held by the lords commissioners of appeals, as well as by the Court of Admiralty, was such as the learned judge of that court, has thus comprehensively expressed:—"The true rule of the court, is the "text of the instructions; what is not found "therein permitted, is understood to be prohibited; upon this plain principle, that the colony trade is generally prohibited, and that "whatever is not specially relaxed, continues in "a state of interdiction †."

The only doctrines in which the supreme tribunal may possibly be supposed to have departed from the rule of the war 1756, or any other

* Cases of the New Adventure; the Charlotte, Coffin; the Volant, Bessom; the Wilhelmina, &c. &c. at the Cockpit, last war.

† Case of the Immanuel at the Admiralty, 2d Robinson's Reports, 202.

ground than that of a voluntary remission of belligerent rights by the crown, were the restitutions of vessels and cargoes which had been captured and condemned prior to the instruction of January, 1794; for by that order the first legislative relaxation of the general prohibitory rule was introduced.

Vessels and cargoes of this description certainly were restored, when the voyages in which they were taken were found to have been such, as that instruction, if in force at the time, would have legalised.

There may be good reasons for giving to such orders in time of war, when they go to enlarge, not to restrain, the indulgence of neutral trade, a retroactive effect upon cases still depending in judgment. Nor is it unjust towards captors; for since they often derive from sudden changes, during the war, in our relations with different powers, or from new strictness in the conduct of the war itself, benefits not in their contemplation at the time of the capture; it is reasonable that their private interest should, on the other hand, give way to the public good, when necessary for purposes of conciliation with neutral states, and to effectuate such amicable arrangements with them, as may intervene between the capture and the judgment. It might be added, that a captor's rights under the acts of parliament which give

him the benefit of the prizes he makes, comprehend by express law, no more than property taken from the enemy; consequently it would be the more unreasonable to restrain on the notion of an inchoate right in him prior to the definitive sentence, the power of the state itself to decide, how far the rules of the law of war shall be relaxed in favour of neutral property, which may be liable to seizure. It is enough that he is indemnified; and in the present case, all captors, whose disappointment would have been attended with actual loss, had reason to be satisfied with the national liberality and justice.

But in truth, the lords commissioners found also some equitable reasons, on behalf of the neutral claimants, for giving to such of them as had traded with the French islands, prior to January, 1794, the benefit of that instruction.

I presume not to develope the motives of his Majesty's government, for granting such large and truly costly indulgences, as were ultimately accorded to neutral commerce during the last war, at the expence of our belligerent interests. They were perhaps proportionate in their weight, to the magnitude of the sacrifice. But the indulgent instruction, of 1794, was probably founded in part, on a consideration which avowedly weighed much with the lords commissioners, for giving it a retrospective effect. It was found,

that before France had actually engaged in hostilities with any maritime power, the revolutionary assemblies and governors of her West India islands, had opened some of their ports, to a considerable extent, to foreign vessels bringing necessary supplies; and consequently that the principle of the rule of the war, 1756, did not apply to the whole extent of the existing neutral commerce with those colonies*.

* As this is an important fact, of which authentic evidence is not easily to be found in Europe, I subjoin a proclamation of the French governor Behague, and the colonial assembly of Martinique, by which certain ports of that island were opened. It is extracted from the evidence in a prize appeal, that of the Peter, Augustus —— Robson, master, before the lords commissioners, Dec. 16, 1801.

"PROCLAMATION.

" John-Peter Anthony de Behague, lieutenant-general in " the King's armies, governor-general of the Windward " Islands, commanding in chief the forces by land and sea.

" Examined by us the resolution of the colonial assem- " bly of the 14th of this month, the purport whereof fol- " lows:

" Extracts of the verbal process of the resolution of the " colonial assembly in their sitting of the fourth day of " December, 1792.

" The colonial assembly of Martinique, after hearing " the reports of its committee, and taking into considera- " tion what had been done in Guadaloupe, upon opening the " ports, resolved,

" 1st. That the ports and roads of Saint Pierre, Fort

This innovation was apparently unknown to, or overlooked by our government, when the in-

" Royal, and Marin, shall be open to all strangers without " exception, for the introduction of all sustenances, and " other necessary articles, as well for the cultivation of " lands, as the erection of buildings, and they are permitted " to export produce of every kind, which may be given them " in return.

" 2d. That without altering old customs in the regard to " the duties on importation, those payable on exportation, " as well by foreigners as Frenchmen, as also by those ship- " ping either to a foreign country, or the French ports, " shall, from the date of the publication of these presents, " consist in one sole duty of three per cent; which duty " shall be borne by the shippers, independent of the addi- " tional duty of 27 livres per hogshead of sugar, and two " and a quarter per cent. on all other island produce, " which shall be received as before, and which are at the " charge of the seller. Taffia, rum, and molasses, shall " continue to be liable only to the former established " duties.

" 3d. That the duties above alluded to shall be paid, " according to the usages and forms already fixed. That all " the above regulations shall continue in full force until ex- " press orders to the contrary. In order that the present " resolution, with the approbation of the governor, may " be carried into effect without delay, 1000 copies shall be " forthwith printed, affixed, published, and sent to the " neighbouring islands, wherever it may be necessary.

(Signed)

" Gilliet Charley, Vice President.
" Gallet S. Aubin, President.
" Rigordy, Secretary.
" Des Londes, Joint Secretary."

struction of November, 1793, was framed; otherwise an exception would probably have been made in favour of such neutral vessels as were found trading within the limitations of the new laws, promulged before the war.

It must indeed be owned, that this relaxation of the national monopoly, was a mere temporary expedient, the result of distress, occasioned by revolution and civil war in the parent state, and the consequent neglect of her transmarine interests in general; that the legislative authority from which it flowed, was highly questionable*;

" By virtue of the powers with which we are invested, we " approve, and do approve of the above decree being carried into execution, according to the form and effect " thereof; and in consequence and by virtue of the same " powers, order, and do order, to the administration, bodies, and functionaries, that these presents be transcribed " in our registry, read, published, and executed in the respective districts. Given at Fort Royal, Martinique, under our seal, and the countersign of our secretary, the " 15th day of December, 1792.

(Signed) " Behague.

" By order of the General,

(Signed) " Perriquet."

* It appeared in the evidence in the same cause from which the above proclamation is extracted, that the royalist and republican parties, who alternately prevailed in the French Windward Islands, in that season of distraction, which immediately preceded the late war, successively opened and shut the ports in opposition to each other, during their brief pe-

and that it was not even pretended by its authors, to be founded on any intention of permanently altering the established commercial relations between the mother country and her colonies. Nor would it have been unnatural to surmise, that this innovation was adopted in contemplation of that war with the maritime powers, which France was determined to provoke, and which so soon after took place. If so, it was a mere stratagem to elude our belligerent rights; and we were no more bound to admit any claims of neutral privilege which might be deduced from it, than if the innovation had been made after the war had actually commenced. The claimants, however, contended that it was not to be considered as a temporising measure, but as a change of system to which France would permanently adhere; and the revolutionary spirit of the day gave some plausibility to the suggestion, though the conduct of the French government, subsequent to the treaty of Amiens, has proved it to have been fallacious.

But however disputable the duty might be on

riods of authority; and it is remarkable, that the party of the royalists and planters, under General Behague, was that which introduced and supported this innovation.—Their opponents abstained from it on motives of respect to the authority of the National Convention, notwithstanding the distress of the islands at the time.

our part, to tolerate this new trade during the late war, on the ground of any change that had previously taken place in the West Indies, it is clear that the neutral merchants who had engaged in it prior to any notice of our hostilities with France, were intitled to finish their voyages without molestation: nor was this ever disputed; unless when their ships were detained on suspicion of having French property on board. Had the fact of the new colonial regulations been known to our government, something more might perhaps have been expected. Some notice ought, perhaps, to have been given, that this country would not acquiesce in the further prosecution of a trade so opposite to her belligerent rights; and this the rather, because we had already forborne to assert them in a case somewhat similar, in the last preceding war.—No such notice was given prior to the instruction of November, 1793: and therefore the neutral merchants might naturally enough conclude, that the toleration of this commerce, which they had experienced at the commencement of the war, would be extended to their future voyages.

That these considerations were admitted by his Majesty's ministers, in the discussions that ensued between them and the neutral powers, may be reasonably conjectured: but certain it is, that the lords commissioners of appeals, adverted to them

as one motive of the great indulgence shewn by their lordships to the class of claimants whose cases we are now reviewing; and consequently, if the right to give a retroactive effect to the instruction of January, 1794, can reasonably be questioned, we have here another ground, on which these restitutions may well be reconciled with the rule of the war 1756.

So far were the decisions of their lordships, even in these early and favourable cases, from impeaching the principle of that important rule, that by some of them it was practically affirmed. Such American vessels captured in the summer of 1793, as were laden with French colonial produce, and bound to the ports of France, or to Europe, were condemned expressly on that rule of law *.

Having stated thus generally the conduct both of the executive government, and of the prize tribunals, of Great Britain, in regard to this great principle of the law of nations, during the last war, I have to add, that on the recommencement of hostilities with France in 1803, the same system was with little variation pursued.

An instruction, dated the 24th of June in that year, directed the commanders of his Majesty's

* Cases of the Charlotte, Coffin; the Volaut, Bessom; and Betsy, Kinsman, 19th Dec. 1801.

ships of war and privateers "not to seize any "neutral vessels which should be found carrying "on trade directly, between the colonies of "the enemy, and the neutral country to which "the vessel belonged, and laden with property "of the inhabitants of such neutral country; "provided that such neutral vessel should not be "supplying, nor should have on the outward "voyage supplied, the enemy, with any articles "contraband of war, and should not be trading "with any blockaded ports."

This proviso had been rendered too necessary by the misconduct of neutrals in the former war, to be now omitted, and forms the only substantial difference between the existing instruction, and that of January, 1798; except that the ports of this kingdom are no longer permitted places of destination, from the hostile colonies; and that the cargo, as well as the ship, is now required to belong to subjects of the same neutral country to, or from which, the voyage is made.

The general result of this historical statement is, that we have receded very far in practice from the application of the rule of the war 1756, in some points, while we have adhered to it in others; but that the principle of that important rule in point of right, has never been at any time, either theoretically, or practically abandoned.

Let us next enquire what use has been made by neutral merchants, of the indulgences which the British government has thus liberally granted. —We have suffered neutrals to trade with the colonies of our enemy, directly to and from the ports of their own respective countries, but not directly to or from any other part of the world, England, during the last war, excepted. Have they been content to observe the restriction?

One pretext of the neutral powers, for claiming a right to trade with the hostile colonies, was the desire of supplying themselves with sugar, and other articles of West India produce, for their own consumption; and it was speciously represented as a particular hardship in the case of America, that, though a near neighbour to the West Indies, she should be precluded from buying those commodities in the colonial markets of our enemies, while shut out by law from our own.

The argument was more plausible than sound; for in time of peace, this new power was subject to the same general exclusion; as were also the other neutral nations.—Besides, Denmark has colonies, which more than supplies her own moderate consumption; and as to that of Sweden, and of the United States, it was always exceedingly small. The only products of the West Indies, that the latter usually imported, a little re-

fined sugar, and coffee which came to them from Europe excepted, were rum and molasses; and with these we were willing still copiously to supply them from our own islands; nor would the importing of such articles as these from the hostile colonies perhaps, have been thought worth a serious dispute. It is well known that the frugal citizens of America, make molasses for the most part their substitute for sugar; and have learned from habit to prefer it to that more costly article.

However, this pretext was completely removed, when the British government gave way so far to it, and the other arguments of the neutral powers, as to allow them to carry on the trade in question, to their own ports. The instruction of 1794, indeed, seemed not to concede so much to the neutral states of Europe; but when it is recollected, that Denmark and Sweden each possessed islands, in the West Indies, which might be made *entrepôts* between their European dominions and the French colonies, it will be seen that they were put nearly on an equal footing with the United States of America.

Had the neutral powers been influenced by justice and moderation, these concessions would not only have been satisfactory, but might have been guarded by reciprocal concessions against any pernicious abuse; as was attempted in the

12th article of our treaty with America, soon after negotiated and signed by Mr. Jay.

The chief danger of our so far receding from the full extent of our belligerent rights, as to allow the neutral states to import directly the produce of the hostile colonies, was that it might be re-exported, and sent either to the mother country in Europe, or to neighbouring neutral ports, from which the produce itself, or its proceeds, might be easily remitted to the hostile country; in which case our enemies would scarcely feel any serious ill effect from the war, in regard to their colonial trade. It was wisely, therefore, stipulated in the American treaty, that West India produce should not be re-exported during the war from that country; and the better to reconcile the United States to that restriction, they were admitted, by the same article, to an extensive trade, during the same period, and for two years longer, with the British West India islands.

Had not this equitable and liberal agreement proved abortive, arrangements of a like tendency would no doubt have been negotiated with the neutral powers of Europe: but unfortunately, the clamorous voice of the French agents, and of a few self-interested men, in America, prevailed so much over the suggestions of justice, and the true permanent interests of both countries, that in the ratification of the treaty by

the government of the United States, the 12th article was excepted.

In truth, those injurious consequences which formed a reasonable subject of apprehension to this country, were essential to the selfish views of the neutral merchants who had engaged in the new trade with the French colonies.

To the Americans especially, whether dealing on their own account, or as secret agents of the enemy, the profit would have been comparatively small, and the business itself inconsiderable, had they not been allowed to send forward to Europe, at least in a circuitous way, the produce they brought from the islands. The obligation of first importing into their own country, was an inconvenience which their geographical position made of little moment; but the European, and not the American market, was that in which alone the ultimate profit could be reaped, or the neutralizing commission secured.

In the partial ratification of the treaty by America, our government acquiesced. No conventional arrangements consequently remained with that neutral power, and none were made with any other, for palliating the evils likely to arise from the relaxing instruction; but they were left to operate, and progressively to increase, to that pernicious and dangerous extent which shall be presently noticed.

War, in suspending the direct communication

between the hostile colonies and their parent states, cannot dissolve those ties of property, of private connection, of taste, opinion, and habit, which bind them to each other. The colonist still prefers those manufactures of his native country with which he has been usually supplied; and still wishes to lodge in her banks, or with her merchants, the disposable value of his produce. That the colonial proprietors resident in Europe, must desire to have their revenues remitted thither, as formerly, is still more obvious; and indeed such an adherence to the old course of things, is both with them and their absent brethren, in general rather a matter of necessity, than choice; for mortgagees, and other creditors, in the mother country, are commonly entitled to receive a large part of the annual returns of a West India plantation.

The consequence is, that into whatever new channels the commerce of the belligerent colonies may artificially be pushed by the war, it must always have a most powerful tendency to find its way from its former fountains to its former reservoirs. The colonial proprietor, if obliged to ship his goods in neutral bottoms, will still send them directly to his home in Europe, if he can; and if not, will make some neutral port a mere warehouse, or at most a market, from which the proceeds of the shipment, if not the

goods themselves, may be remitted to himself, or his agents in the parent state.

Such has been the event in the case before us. But let us see more particularly how the grand objects of the enemy planter and merchant, have been, in this respect, accomplished.

When enabled by the royal instructions, to trade safely to and from neutral ports, they found various indirect means opened to them for the attainment of those ultimate ends, of which the best, and most generally adopted, were the two following:—They might either clear out for a neutral port, and, under cover of that pretended destination, make a direct voyage from the colony to the parent state; or they might really proceed to some neutral country, and from thence re-export the cargo, in the same or a different bottom, to whatever European market, whether neutral or hostile, they preferred.

The first of these was the shortest, and most convenient method; the other the most secure.—The former, was chiefly adopted by the Dutch, on their homeward voyages; because a pretended destination for Prussian, Swedish, or Danish ports in the North Sea, or the Baltic, was a plausible mask, even in the closest approximation the ship might make to the Dutch coast, and to the moment of her slipping into port: but the latter method, was commonly preferred by the Spaniards

and French, in bringing home their colonial produce; because no neutral destination could be pretended, that would credibly consist with the geographical position and course of a ship coming directly from the West Indies, if met with near the end of her voyage, in the latitude of their principal ports.

The American flag, in particular, was a cover that could scarcely ever be adapted to the former method of eluding our hostilities; while it was found peculiarly convenient in the other. Such is the position of the United States, and such the effect of the trade winds, that European vessels, homeward-bound from the West Indies, can touch at their ports with very little inconvenience or delay; and the same is the case, though in a less degree, in regard to vessels coming from the remotest parts of South America or the East Indies. The passage from the Gulph of Mexico, especially, runs so close along the North American shore, that ships bound from the Havannah, from Vera Cruz, and other great Spanish ports bordering on that Gulph, to Europe, can touch at certain ports in the United States with scarcely any deviation. On an outward voyage to the East and West Indies, indeed, the proper course is more to the southward, than will well consist with touching in North America; yet the devia-

tion for that purpose is not a very formidable inconvenience. Prior to the independency of that country, it was not unusual for our own outward-bound West Indiamen to call there, for the purpose of filling up their vacant room with lumber or provisions.

But this new neutral country, though so happily placed as an *entrepôt*, is obviously no place for a fictitious destination, on any voyage between the colonies and Europe; because, as it lies midway between them, the pretext would be worn out long before its end was accomplished.

From these causes it has naturally happened, that the protection given by the American flag, to the intercourse between our European enemies and their colonies, since the instruction of January, 1794, has chiefly been in the way of a double voyage, in which America has been the half-way house, or central point of communication. The fabrics and commodities of France, Spain, and Holland, have been brought under American colours to ports in the United States; and from thence re-exported, under the same flag, for the supply of the hostile colonies. Again, the produce of those colonies has been brought, in a like manner, to the American ports, and from thence re-shipped to Europe.

The royal instruction of 1798, however, opened

to the enemy a new method of eluding capture under the American flag, and enabled it to perform that service for him, in a more compendious manner. The ports of this kingdom, were now made legitimate places of destination, to neutrals coming with cargoes of produce directly from the hostile colonies.

Since it was found necessary or prudent, to allow European neutrals to carry on this trade directly to their own countries, it was perhaps, deemed a palliation of the evils likely to follow, and even some compensation for them in the way of commercial advantage, to obtain for ourselves a share of those rich imports, which were now likely to be poured more abundantly than ever, through our own very costly courtesy, into the neutral ports of Europe. We had submitted to a most dangerous mutilation of our belligerent rights, to gratify the rapacity of other nations; and we felt, perhaps, like a poor seaman, mentioned by Goldsmith, who, in a famine at sea, being obliged to spare a certain part of his body to feed his hungry companions, reasonably claimed a right to have the first steak for himself. Or, perhaps, the motive was a desire more effectually to conciliate America. If so, we were most ungratefully requited; but in the other case, the error flowed from a very copious source of our

national evils, though one too plausible and popular, to be incidentally developed in a work like this: I mean a morbid excess of sensibility to immediate commercial profit. The Dutch who during a siege sold gunpowder to their enemies, were not the only people who have sometimes preferred their trade to their political safety.

The use immediately made by the American merchants of this new licence, was to make a pretended destination to British ports, that convenient cover for a voyage from the hostile colonies to Europe, which their flag could not otherwise give; and thus to rival the neutrals of the old world, in this method of protecting the West-India trade of our enemies, while they nearly engrossed the other.

They often indeed really did call at some port in the channel; but it was in general, only to facilitate through a communication with their agents here, and by correspondence with their principals in the hostile countries, the true ultimate purpose of the voyage. They might even sell in our markets, when the prices made it clearly the interest of their French or Spanish employers to do so; but whether Havre, Amsterdam, Hamburgh, or London, might be the more inviting market, the effect of touching in England was commonly only that of enabling

them to determine, in what way the indulgence of this country might be used with the greatest profit to our enemies.

This last extension of our ruinous liberality has not, in the present war, been renewed (A). The method of the double voyage, therefore, which was always the most prevalent, is now the only mode, of American neutralization in the colonial trade.

It may be thought, perhaps, that this allowed method of eluding our hostilities, might have contented the French and Spaniards, and their neutralizing agents, as a deliverance from all the perils of capture, sufficiently cheap and safe, to satisfy the enemies of this great maritime country, when they durst not shew a pendant on the ocean. To neutrals, trading on their own account, also, this qualified admission into the rich commerce of both the Indies, may seem to have been a boon advantageous enough; when considered as a gratuitous gain derived from the misfortunes of other nations. But moderation, is the companion of justice, and belongs not to the selfish spirit of encroachment; nor is successful usurpation ever satisfied, while there remains with the injured party one unviolated, or unabdicated right.

America, we have seen, like other neutral

(A) See Appendix.

powers, was permitted to carry the produce of the hostile colonies to her own ports, and from thence might export it to Europe; nay, even to France and Spain. She was also at liberty to import the manufactures of those countries, and might afterwards export the same goods to their colonies; but the word *directly*, in the royal instruction, as well as the spirit of these relaxations, in general, plainly required, that there should be a *bona fidê* shipment from, or delivery in, the neutral country—in other words, that the voyage should actually, and not colourably, originate, or terminate, in such a way as the subsisting rule allowed.

The American merchants, however, very early began, in their intercourse with the Spaniards, to elude the spirit of the restriction, by calling at their own ports, merely in order to obtain new clearances; and then proceeding to Spain, with produce which they had shipped in her colonies; or to the latter, with supplies, which were taken on board in Spain.

It seems scarcely necessary to shew, that, by this practice, the licence accorded by the British government was grossly abused. What was the principle of the relaxation?—an indulgence expressly to the commerce of neutral countries. What was the object of this restriction?—To prevent, as much as consisted with that indul-

gence, the intercourse between the European enemy and his colonies, in neutral ships. But the mere touching, or stopping, of a ship at any country, does not make her voyage a branch of the trade of that country. Our East India trade, is not the trade of St. Helena. Neither was it any restraint on the intercourse between the enemy and his colonies, such as could gravely be supposed to be meant by the restriction, to oblige him merely to drop anchor, at some neutral port in his way.

According to some recent doctrines, indeed, which that great champion of neutral rights, the murderer of the Duc D'Enghein, inculcates, trade in a neutral vessel, be the voyage what it may, is neutral trade; but America does not, in the present case at least, assert that preposterous rule; for she tacitly professes to acquiesce in the restriction in question, when, in point of form, she complies with it; and the neutrality of the trade, in the sense of the royal instruction, is plainly a local idea: it is the commerce, not of the ship, but of the country, to which indulgence was meant to be given. The only question, therefore, is, whether the trade between France or Spain and their colonies, becomes the trade of America, merely because the ships which conduct it, call at one of her ports on their way.

By the merchants of the United States, the

line of neutral duty in this case was evidently not misconceived; for the departures from it, were carefully concealed, by artful and fraudulent contrivance. When a ship arrived at one of their ports to neutralize a voyage that fell within the restriction, *e. g.* from a Spanish colony to Spain, all her papers were immediately sent on shore, or destroyed. Not one document was left, which could disclose the fact that her cargo had been taken in at a colonial port: and new bills of lading, invoices, clearances, and passports were put on board, all importing that it had been shipped in America. Nor were official certificates, or oaths wanting, to support the fallacious pretence. The fraudulent precaution of the agents often went so far, as to discharge all the officers and crew, and sometimes even the master, and to ship an entire new company in their stead, who, being ignorant of the former branch of the voyage, could, in case of examination or capture, support the new papers by their declarations and oaths, as far as their knowledge extended, with a safe conscience. Thus, the ship and cargo were sent to sea again, perhaps within eight and forty hours from the time of her arrival, in a condition to defy the scrutiny of any British cruizer, by which she should be stopped and examined in the course of her passage to Europe.

By stratagems like these, the commerce be-

tween our enemies and their colonies was carried on even more securely, than if neutrals had been permitted to conduct it in the most open manner, in a direct and single voyage.

In that case, both the terms of the voyage being hostile, and the papers put on board at the port of shipment, being derived from an enemy, or from agents in the hostile country, the suspicion of a visiting officer would naturally be broad awake; and a strict examination, even though the vessel should be brought into port for the purpose, would, generally speaking, be justifiable and safe. The alleged right of property in a neutral claimant of the cargo, might also, in such a case be examined up to its acquisition in the hostile country, by the light of the evidence found on board. Whereas, in the latter branch of the voyage that has been described, all ordinary means of detecting the property of an enemy under its neutral garb, are as effectually withdrawn, as if the transaction had really begun in a neutral port.

The illegal plan of the voyage itself is very easily concealed during its anterior branch, since the papers then point only to the neutral country, as the ultimate place of destination; and there is not the least necessity for hazarding a disclosure to the master, much less to the crew, that the real intention is different.

With such facilities, it is not strange that this fraudulent practice should have prevailed to a great extent, before it met the attention of our prize tribunals. In fact, though often since incidentally discovered in the course of legal proceedings, it can scarcely ever be detected in the first instance by a captor at sea, so as to be a ground of seizure, unless by an accident such as once brought it to judicial notice.

A ship, with a valuable cargo of sugars from the Havannah, on her passage to Charlestown, the port to which she belonged, was stopped and examined by a British privateer. As the papers were perfectly clear, and concurred with the master's declaration, in shewing that the cargo was going on account of the American owners to Charlestown, where the voyage was to end, the ship was immediately released.

After a stay of a few days at that port, she sailed again with the same identical cargo, bound apparently to Hamburgh, perhaps, in fact, to Spain; but with an entire new set of papers from the owners and the Custom House, all importing that the cargo, not one package of which had been in fact landed since she left the Havannah, had been taken on board at Charlestown. The fact also was solemnly attested on oath.

Soon after the commencement of this second

part of her voyage, she was again brought to by a British cruizer; and her papers, aided by the master's asseverations, would doubtless have induced a second dismissal, but for one aukward coincidence. It happened that the visiting cruizer, was the very same privateer by which she had been boarded on her voyage from the Havannah; and whose commander was able to recognize and identify both her and her cargo, as those he had lately examined.

This case came by appeal before the lords commissioners; who finding the above facts clear and undisputed, thought them a sufficient ground for condemning the property. They held that the touching at a neutral port, merely for the purpose of colourably commencing a new voyage, and thereby eluding the restrictive rule of law, in a branch of it not relaxed by the royal instructions, could not legalize the transaction; but that it ought nevertheless to be considered as a direct and continuous voyage from the hostile colony to Europe, and consequently illegal*.

In this case, the detection being full and conclusive, it would have been in vain for the claimants to contend that there had been an actual importation into America, with an intention to land

* Case of the Mercury, Roberts, at the Cockpit, July 28, 1800, and Jan. 13, 1802.

and sell the cargo. But other cases occurred, wherein the evidence taken in the prize court, brought to light less circumstantially the fact, that the captured cargoes, though ostensibly shipped in America, had been previously brought in the same bottoms, and on account of the same persons, from Spain, or a Spanish colony; and in these cases an explanation was offered by the American claimants, to which the court of admiralty, and the lords commissioners, in their great indulgence, thought proper to listen. It was alleged, that the importations into America were genuine, and were made with a view to the sale of the cargoes in that country; but that in consequence of a fall of price in the markets, the importers found themselves unable to sell without loss; and therefore were obliged, contrary to their original design, to re-export the cargoes, and send them to Europe or the West Indies, according to the now acknowledged destination.

An excuse like this, had it been offered even in the first instance, with a gratuitous disclosure of the anterior branch of the transaction, might reasonably have been received with diffidence; especially when it was considered, that the goods composing these cargoes, were of a kind not generally consumed in America, and such as could be in common demand there only for the purpose of re-exportation to that very country, to which

they were now actually proceeding. Such is notoriously the case, in respect of the sugars of the Havannah, and also in respect of the plantation stores, and supplies usually sent to the foreign West Indies from Europe, of which these cargoes were chiefly composed; and it was evidently very unnatural, that a merchant, found in actual connection both with the hostile colonies, and with the hostile or prohibited port in Europe, as an importer from the one, and an exporter to the other, should have been driven unintentionally, and by necessity alone, into that very convenient and profitable course of trade, which he was found actually pursuing.

But when the studied suppression of the former branch of the transaction, is taken into the account; and when it is considered that this excuse was commonly brought forward in the last instance, to avert the penal consequences of a discovery accidentally made in the prize court; the pretence must be admitted to have been in the highest degree suspicious, if not absolutely unworthy of credit.

Yet such has been the extreme lenity of those tribunals, of whose severity the enemy and his neutralizing agents have the effrontery to complain, that these excuses were not rejected as incredible; and the claimants were indulged, when necessary, with time to establish them in point of fact, by further proofs from America.

When an actual attempt to sell the cargo in the neutral port, has been in such cases alleged, and in any degree verified, that fact has been held sufficient to support the general excuse. A cargo of Spanish manufactures shipped at Bilboa, and taken when proceeding from America to the Havannah, on account of the same shippers, was restored on evidence of an attempt to sell, having been made by the claimant, on the ship's arrival at Philadelphia; though the cargo chiefly consisted of nails for sugar boxes, an article consumed only in the Spanish West Indies*.

Certain other general criteria of a *bona fide* importation into the neutral country, have been in these cases admitted and required.

Those who are conversant with the business of the prize court, well know, that the affidavits in further proof, are never wanting to support every case that a claimant may be allowed to set up. It may be even asserted with truth, that property taken under neutral colours is scarcely ever condemned, but by a sentence which in effect impeaches the neutral merchants and their agents, of wilful and elaborate perjury. Nor is the shocking fact surprising, if it be considered, that every man who undertakes, for a commis-

* Case of the Eagle, —— Weeks, at the Cockpit, May 15th, 1802.

sion, to cover the enemy's property under neutral papers, engages beforehand to furnish all the perjury that may be necessary to support his claim in case of capture, as an essential part of the contract. Courts of prize, therefore, wisely lay much stress on such probable presumptions as may arise from undisputed facts; especially such facts as are collateral to the main transaction, of a public nature, and not likely to have been contrived for the purpose of imposition.

Accordingly, in the class of cases we are considering, it was held of great importance to shew, that the cargo had been landed in the neutral port, that the duties on importation had been paid, and that the first insurance had been made for a voyage to terminate in the neutral country. In a case of this description, which came before Sir William Scott early in 1800, he laid great stress on these circumstances, especially the two former; regarding them as the best general indications of the original intention on which, in the absence of any evidence of an opposite tendency, he could found his judgment; and, on proof being exhibited that the goods in question had been landed, and the duties for them paid in America he restored the property*. The lords commissioners, in subsequent

* Case of the Polly, —— Lasky, at the Admiralty, Feb. 5th, 1800. 2 Robinson's Reports, 361. There was nothing

cases before them, were of the same opinion; and therefore it became tacitly a general rule, that when the excuse in question was set up by a claimant, he must support it by shewing those ordinary features of a sincere and genuine importation.

But, unfortunately, such practical rules as are devised for the better discovery of truth, and suppression of fraud, in the prize court, are liable to lose their effect as soon as they become known in neutral countries; for persons meditating future imposition, will adapt their conduct prospectively to the rule of practice, so as to prepare the means of furnishing, in case of necessity, the proofs which they know will be required.

The landing the cargo in America, and reshipping it in the same bottom, were no very costly precautions for better securing the merchant against the peril of capture and detection in the latter branch of these important voyages. In fact, it is often a necessary proceeding, in order to clean, and refit, or repair the vessel; for in the West-India trade, ships must usually go into dock to have their bottoms cleaned, and receive all necessary repairs, once in every

in this case, beyond the fact, that a part of the cargo had been imported two months before in the same vessel from the West Indies, from which any collusive intention in the owner could be inferred.

voyage. American owners, therefore, whose ships are constantly employed in this circuitous commerce between the West Indies and Europe, must, to maintain them in proper condition, either submit to the great expence and disadvantage of cleaning and repairing them in a foreign and belligerent country, or embrace the opportunity of careening, or putting them into dock, on the arrival at their own ports, either on the outward voyage from Europe, or the return. It is, probably, so much cheaper to refit and repair their ships in America, than in Spain or the West-Indies, as to compensate them for the expence of landing and re-shipping the cargo.

The laying a foundation for the necessary evidence, in regard to insurance, was a still easier work: for though at first they sometimes insured the whole intended voyage, with liberty to touch in America, it was afterwards found, in consequence perhaps of the captures and discoveries we have noticed, to be much safer for the underwriters, and consequently cheaper in point of premium to the owners, to insure separately the two branches of the voyage; in which case, America necessarily appeared by the policies on the first branch, to be the place of ultimate destination; and on the last, to be that of original shipment.

The payment of duties, then, was the only remaining badge of the simulated intention for which the merchants had to provide; and here they found facilities from the laws of the United States, such as obviated every inconvenience. On the arrival of a cargo destined for re-exportation in the course of this indirect commerce, they were allowed to land the goods, and even to put them in private warehouses, without paying any part of the duties; and without any further trouble, than that of giving a bond, with condition that if the goods should not be re-exported, the duties should be paid. On their re-shipment and exportation, official clearances were given, in which no mention was made that the cargo consisted of bonded or debentured goods, which had previously been entered for re-exportation; but the same general forms were used, as on an original shipment of goods which had actually paid duties in America (B). Nor was this all; for, in the event of capture and further inquiry respecting the importation into that country, the collectors and other officers were accommodating enough to certify, that the duties had been actually paid or secured to the United States; withholding the fact, that the bonds had been afterwards discharged on the

(B) See Appendix.

production of debentures, or other official instruments, certifying the re-exportation of the goods.

By these means, the American merchant, whether trading on his own account, or as an agent for the enemy, was enabled securely to carry on a commerce, such as the royal instructions were far from meaning to tolerate. If by any accident or inadvertency, the preceding branch of the voyage should be discovered, he had an excuse at hand, such as would be accepted by the British prize court; and which he was prepared to support by such evidence, as he knew beforehand would suffice.

But rules of practice, which have been devised by any court, for the guidance and assistance of its own judgment on questions of fact, can evidently not be binding on the court itself, when discovered to be no longer conducive to that end; much less when they are found to be made subservient to the purposes of imposition and fraud. The lords commissioners of appeal, therefore, finding it manifest in a recent case, that the alleged importation into Salem, of a cargo which had been shipped in Spain, and afterwards reshipped for the Havannah in the same bottom, was wholly of a colourable kind; and that, notwithstanding the usual clearances and certifi-

cates, the duties had not been finally paid to the American custom-house; rejected the claim, and condemned the ship and cargo*.

In this case, as in others of the same description, there was found on board an affidavit of the proprietor, stating, that the goods had been "laden "on board from stores and wharfs at Salem, and "that the duties thereon were *secured to the Uni-* "*ted States, or paid* according to law." Yet it afterwards appeared, by his own admission, that he had only given the usual bond on the entry of the cargo from Barcelona; which, as we have seen, is in effect a security to re-export, rather than to pay duties on, the cargo; and which had been accordingly cancelled on the re-exportation.

Two other American cases were soon after heard at the Admiralty, in which, under similar circumstances, the learned judge of that court made similar decrees; holding that this mode of landing, and paying or securing duties on, the cargoes in America, was not sufficient to constitute an importation into the neutral country, so as

* Case of the Essex, — Orme, at the Cockpit, May 22, 1805.

There were in this case great doubts as to the neutrality of the property; and their lordships did not express on what ground they decided; but their sentence was understood at the bar to have been founded on the illegality of the trade.

to break the continuity of a voyage from the French colonies to Europe, and thereby legalize the transaction under the indulgent instruction now in force; the intention of the parties, as was manifest from the other facts in evidence, having been to elude the legal restriction *.

It seems impossible for any man seriously to disapprove of these decisions, without denying the validity of the rule of law, which it is the purpose of these colourable importations into America to evade—a rule which, as we have seen, is acquiesced in by the neutral powers themselves.

The payment, or non-payment, of duties in a neutral country, obviously cannot, of itself, vary our belligerent rights; nor can the mere landing and reshipment of goods, without a change of property or intention, give to the owner any right of carriage which he did not previously possess. —Those circumstances consequently were never regarded in the prize court as of any intrinsic, or substantive importance; they were merely considered as evidence of the alleged primary intention of the neutral importer; and that intention was enquired into only for his benefit, in order to absolve him from strong general presumptions against the fairness and legality of the voyage. It

* Cases of the Enoch and the Rowena, at the Admiralty, July 23, 1805.

would therefore have been inconsistent and preposterous, to give to any, or all of those circumstances, any justificatory effect, when they were found not at all to support the favourable conclusions which had been originally drawn from them; but rather, on the contrary, to confirm the general adverse presumptions, which they had been once supposed to repel. When it was found that the duties had been secured, not in a way naturally applicable to goods meant to be sold and consumed in America, but in a mode devised for the special convenience of importers intending a re-exportation, the suspicion that the claimant originally meant to continue the voyage, as he eventually did, was obviously strengthened, if not absolutely confirmed.

If the justice or consistency of our prize tribunals in these cases, needed a further defence, it might be found in the great frequency, I might say universality, of the excuse which they had too indulgently allowed. The credit of the main pretext itself, was worn out by frequency of use.

A man on whose person a stolen watch should be found, might allege that he had picked it up in the street, and might find probable evidence to satisfy a magistrate that his defence was well-founded: but what if he were found possessed of ten or twenty watches, stolen at different times,

from different persons, and should offer in respect of them all, the same identical explanation? The same evidence would now be reasonably regarded as insufficient to deliver him from the highly aggravated suspicion.

Or, to borrow an illustration from a case connected with our general subject, and one which is practically notorious:—A neutral vessel is taken in the attempt to enter a blockaded port, which lies wide of her course to that place to which she is ostensibly destined: the excuse offered to the captor is, that a storm had driven her out of her proper course; and that, being in distress, she was going into the blockaded port of necessity, in order to refit. For once, or twice, perhaps, such excuses might gain credit, on the oaths of the master and his people; but a multitude of vessels are taken in the same attempt; and all their masters give precisely the same excuse. They have all met with a storm; and are all obliged by distress, to put into the prohibited port. Surely the commanders of the blockading squadron, and the judges of the prize courts, may now justifiably shut their ears to this stale pretext; unless it comes supported by more than ordinary evidence.

So in the case before us, when it has been found, during several years, that all American merchants detected in carrying from their own

country to Europe, produce which they had imported into the former in the same bottoms, from the colonies of our enemies, have exactly the same exculpatory facts to allege; the defence, on this ground alone, might justly forfeit the credit which it in the first instance received. It would be strange indeed, if so many men, had all been accidentally, and reluctantly, driven to consult their own interest to the utmost possible advantage, through a disappointment in their more abstinent views; and compelled to go eventually to the best markets, instead of selling, as they designed, at the worst.

Too much time may perhaps appear to have been spent on the history of these circuitous voyages, which, though an extensive, form but a single branch, of the abuses I wish to expose.

It was however not unimportant to shew in it, the true subject of those violent clamours with which the public ear has been lately assailed. The recent invectives of the Moniteur, and the complaints of the American merchants, which have been echoed by our own newspapers, and falsely alleged to have produced concessions from his Majesty's government, have all had no sounder foundation, than the late conduct of our prize courts as here explained, in regard to this indirect trade. The sole offence is that those

tribunals, finding themselves to have been deceived for years past by fallacious pretexts, have resolved to be cheated in the same way no longer. They have laid down no new rule of judgment, but only learned to be more circumspect than before in the admission of excuses by which a subsisting rule was evaded. It is on this account only, and the consequent capture of some American West Indiamen supposed to be practising the usual fraud, that we are accused of insulting the neutral powers, of innovating on the acknowledged law of nations, and of treating as contraband of war, the produce of the West India Islands (C).

Though these collusive voyages, are the most general abuse of the indulgence given by the royal instructions, and are a mode of intercourse with the hostile colonies, peculiarly productive of a fraudulent carriage for the enemy on his own account under neutral disguise, the suppression of the practice would by no means remedy the enormous evils which result from that intercourse in general.

An adherence by our prize tribunals to their recent precedents, will perhaps put a stop to the re-exportation from neutral ports, of the same

(C) See Appendix.

colonial produce, in the same identical bottom, and on account of the same real or ostensible owners by whom it was imported; but a change of property in the neutral country, will be a false pretence easily made, and not easily detected (D): nor will the substitution of a different vessel, add very much to the trouble or expence of the transaction. Two ships arriving about the same time, in the same harbour, may commodiously exchange after landing their cargoes, and proceed with them to the same places of destination. A transhipment does not indeed, according to the established rules of judgment in the prize court, legalize a transaction which would have been unlawful if continued in the same bottom; nor would the landing the goods and re-shipping them in a different bottom, be considered, in the case supposed, as any better than a transhipment; but by such an expedient the transaction might be effectually concealed. In short, new methods of carrying the produce of the hostile colonies to any part of Europe, will not be wanting, nor will there be any dearth of means for amply supplying those colonies with the manufactures of their parent states, so long as both are permitted not only to be brought to, but export-

(D) See Appendix.

ed from, a neutral country, according to the existing instruction.

Having shewn how much has been indulgently conceded to the neutral flag, in respect of the colonial trade of our enemies, and how much more it has licentiously and fraudulently assumed, I proceed to notice, as briefly as possible, the highly alarming effects.

The mischief, to correct which the rule of the war 1756 was first applied, was of a partial and limited kind. In that war, neutral ships, though admitted into some of the colonial ports of France, were by no means the sole carriers of their produce or supplies. The enemy continued to employ his own commercial flag, as far as his inadequate power of protecting it extended; and neutrals were rather partners in, than assignees of, the national monopoly.

In the American war, their participation in this commerce was still more limited.

But during the last war, and in the present, a far more comprehensive innovation has taken place. France and Holland have totally ceased to trade under their own flags, to or from the ports of any of their colonies; and have appa-

rently assigned the whole of these branches of their commerce, to the merchants of neutral states.

Spain, though with more hesitation, and by gradual advances, has nearly made as entire a transfer of all her trade with her colonies on the Atlantic; and if any reservation now remains, it is in respect of some part only of the specie and bullion, for conveying which a ship of war or two may be occasionally risqued. Even those most valuable exports, have been largely intrusted to the neutral flag at Vera-Cruz, Carthagena, La Plata, and other ports; while the still more important commerce of the Havannah, and of Cuba in general, has known no other protection*.

Of the French colonies in the Antilles, of Cayenne, and Dutch Guiana, while that country was hostile to us, of the Isles of France and Bourbon, of Batavia, Manilla, and of all other Asiatic settlements which have remained under a flag hostile to this country, it may be truly affirmed that neutrals have been their only carriers. The mercantile colours of their respective countries, and of their confederates, have been absolute strangers in their ports. Even the gum trade of

* Cases of the Flora, Arnold, Gladiator, Emelia, Vera Cruz, &c. &c. at the Cockpit.

Senegal, has been made over to neutrals, and its garrison supplied by them in return*.

But why should I enumerate the particulars of this unprecedented case, when it may be truly affirmed in few words, that *not a single merchant ship under a flag inimical to Great Britain, now crosses the equator, or traverses the Atlantic Ocean.*

Though to the generality of my readers this proposition may seem extraordinary, and perhaps too strange to be believed, yet it forms only part of a still more comprehensive and singular truth —*With the exception only of a very small portion of the coasting trade of our enemies, not a mercantile sail of any description, now enters or clears from their ports in any part of the globe, but under neutral colours* (E). My more immediate business however is with that colonial trade, which subsists by our indulgence alone; and which fraud and perjury could not rescue from our cruizers, if we did not forbear to exercise our clear belligerent rights.

The commerce which thus eludes the grasp of our naval hostilities, is not only rich and various, but of a truly alarming magnitude.

The mercantile registers at Lloyd's alone, might

* Case of the Juliana, Carsten, at the Cockpit, 1805.

(E) See Appendix.

sufficiently manifest its great extent; for they announce every week, and almost every day, numerous arrivals of ships from America, in the ports of Holland and France; and it is notorious that they are freighted, for the most part, with sugar, coffee, and the other rich productions of the French and Spanish West Indies. Indeed, when the harvests of Europe have not failed so much as to occasion a large demand for the flour and grain of North America, that country has scarcely any native commodities, tobacco excepted, that can be the subjects of such a commerce. These vessels return chiefly in ballast; but the portion of goods which they obtain as return cargoes, are stores and manufactures, destined for the supply of the hostile colonies, though previously to pass through the neutralizing process in America.

Enormous is the amount of the produce of the new world, thus poured into the south, as well as the north of Europe, under cover of the neutral flag! At Cadiz, at Barcelona, and the other Spanish ports, whether within or without the Mediterranean, neutral vessels are perpetually importing, unless when interrupted by our blockades, the sugar of the Havannah, the cocoa, indigo, and hides of South America, the dollars and ingots of Mexico and Peru; and returning with

European manufactures, chiefly the rivals of our own. East India goods, are also imported by these commercial auxiliaries into Spain; but still more copiously, into Holland and France.

Nor is it only in their own ports, that our enemies receive the exports of America, and of Asia, in contempt of our maritime efforts.—Hamburgh, Altona, Embden, Gottenburgh, Copenhagen, Lisbon, and various other neutral markets, are supplied, and even glutted with the produce of the West Indies, and the fabrics of the East, brought from the prosperous colonies of powers hostile to this country. By the rivers and canals of Germany and Flanders, they are floated into the warehouses of our enemies, or circulated for the supply of their customers in neutral countries. They supplant, or rival the British planter and merchant, throughout the continent of Europe, and in all the ports of the Mediterranean. They supplant even the manufacturers of Manchester, Birmingham, and Yorkshire; for the looms and forges of Germany are put in action by the colonial produce of our enemies, and are rivalling us, by the ample supplies they send under the neutral flag, to every part of the New World.

Antwerp, a happy station for the exchange of such merchandize, is now rapidly thriving under the fostering care of Buonaparte. His efforts for

the restoration of its commerce, during the short interval of peace, produced no very splendid effects; but the neutral flags have proved far more auspicious to the rising hopes of the Scheldt, than the colours of Holland and France. Its port has become a favourite haunt of the American West Indiamen, and profits in various ways, by the sale of their valuable cargoes (F).

If we look beyond the Atlantic, and into the Eastern Ocean, we shall find the sources of this commerce, under the same benign auspices of the neutral flag, in the most thriving and productive state. Buonaparte has recently boasted, that Martinique and Guadaloupe are flourishing, in despite of our hostilities, so much beyond all former experience, that, since 1789, they have actually doubled their population *. Had he said the same also of their produce, the boast perhaps would have been far less unfounded than his assertions usually are: but he ought to have added, that since the first notice of the war, the French flag has not brought them a barrel of flour, nor exported a hogshead of their sugar. Even the ships in their harbours, that had been laden before the new hostilities were announced, were

(F) See Appendix.

* Extract from the Moniteur in the London Papers of September 2d.

ostensibly transferred with their cargoes to neutral merchants, and sailed under neutral colours.

He has vaunted also, and with truth, the prosperous state of Cayenne, and of the Isles of France and Reunion, once called Bourbon, whose prosperity is owing to the same efficacious cause; aided by their becoming warehouses for the commerce of Batavia.

The Spanish government is not so ostentatious; but its colonies are quietly reaping the fruit of that fortunate revolution, the suspension of their prohibitory laws. The neutral flag gives to them not only protection, but advantages before unknown. The gigantic infancy of agriculture in Cuba, far from being checked, is greatly aided in its portentous growth during the war, by the boundless liberty of trade, and the perfect security of carriage (G). Even slaves from Africa are copiously imported there, and doubtless also into the French islands, under American colours. —America indeed has prohibited this commerce, and wishes to suppress it; but our enemies can find agents as little scrupulous of violating the law of their own country, as the law of war; and so wide has been our complaisance to depredators on our belligerent rights, that even the

(G) See Appendix.

slave-trading smuggler, has been allowed to take part of the spoil *.

To the Spanish continental colonies also, war has changed its nature: it has become the handmaid of commerce, and the parent of plenty. Even the distant province of La Plata, has been so glutted with European imports, that the best manufactures have sold there at prices less than the prime cost in the distant country from which they came †.

In short, all the hostile colonies, whether Spanish, French, or Batavian, derive from the enmity of Great Britain, their ancient scourge and terror, not inconvenience but advantage: far from being impoverished or distressed by our hostilities, as formerly, they find in war the best sources of supply, and new means of agricultural, as well as commercial prosperity.

Happy has it been for them, and their parent states, that the naval superiority of their enemy has been too decisive to be disputed.

"Una salus victis, nullam sperare salutem."

A fortunate despair, has alone saved them from all the ruinous consequences of an ineffectual

* Cases of the Oxholm, Chance, &c. at the Cockpit.

† This fact has appeared in the evidence brought before our prize tribunals, in the case of the Gladiator, Turner, at the Cockpit, in 1802, and in other causes.

struggle; and given them advantages greater than they could have hoped from a successful maritime war. They may say to each other as Themistocles to his children, when enriched, during his exile, by the Persian monarch, "We "should have been ruined, if we had not been "undone."

It is singular enough, that the same policy which the most celebrated French writers on colonial affairs, earnestly recommended to Buonaparte, soon after the peace of Amiens, as the best mean of promoting his favourite object, the restoration of the colonies and the marine; is that which the war has benignantly forced upon him *. He was as hostile as they wished, to the liberty of the negroes; but all their persuasion did not suffice, to induce him to unfetter for a while the colonial trade, till their powerful arguments were seconded by a new maritime war.

Perhaps it may be supposed that we are at least able to diminish the immediate profit of that commerce, which we generously forbear to obstruct, by obliging our enemies to import their colonial produce on dearer terms than formerly, into the European markets.

* See Barre Saint Venant, des Colonies Modernes, &c. and Memoirs sur les Colonies, par V. P. Malouet.

But let it be considered, that in a mercantile view, relative, not positive, expence on importation, is the criterion of loss or gain. If the price of the commodity rises in proportion to the advance in that expence, the importer loses nothing: and if the war inhances the freight, and other charges to the British, more than to the French, or Spanish merchant, then the latter may derive a positive advantage from the general rise in the neutral markets; while, even in respect of the home consumption, there will, in a national view, be a balance of belligerent inconvenience against us.

Now I fear the fact is, however strange it may seem, that the advance made by the war in the expence of importation into this country from the British colonies, in respect of freight, insurance, and all other charges taken together, is fully equal, if not superior, to that to which our enemies have been subjected in their covert and circuitous trade.

The average freight from the British Leeward Islands for sugars, immediately prior to the present war, was four shillings and sixpence per cwt.; it is now about eight shillings: an advance of above 77 per cent.

The peace freights from the French and Spanish colonies, were rather higher, on an average, than from our own; but I am unable to state in

what degree they are advanced by the war: for, in the circuitous mode of conveyance under neutral colours, by which alone the produce of those colonies now passes to Europe, the cargo is always either represented as belonging to the owner of the ship, and, consequently not subject to freight; or as laden in pursuance of a charter party, in which the ship is ostensibly freighted on account of some other neutral merchant, for a sum in gross. If a genuine bill of lading or charter party is discovered, the freight is mixed up with a neutralizing commission, from which it cannot be distinguished.

It may, however, be safely affirmed, that the freight, independently of the commission, is considerably less in neutral, than in British ships, on account of the comparative cheapness of the terms on which the former are purchased and fitted out.

A comparison of the expence of insurance, at these different periods, to our enemies, and to our own merchants respectively, will be easier and more material; for the advance in the rates of insurance, when made against war risques, is a most decisive criterion of the effect of a maritime war. Here I have facts to submit to the reader, which an Englishman cannot state without mortification, though they are too important to be withheld.

Immediately prior to the present war, the premium of insurance from the Leeward islands to London, in a British ship, was two per cent.; from Jamaica, four per cent.: at present, the former is eight, to return four if the ship sails with convoy and arrives safe; the latter ten, to return five, on the same condition. Single or running ships, if unarmed, can scarcely be insured at all—if armed, the premium varies so much according to the different estimates of the risque, that an average is not easily taken.

At the former period, the insurance from the French Windward Islands to Bourdeaux, was three per cent.; from St. Domingo, it was as high as five, and even six; from the Havannah, to Spain, four per cent. in ships of the respective countries. The existing premium on these direct voyages cannot be stated; since they are never openly insured in this country; and as to the French and Spanish commercial flags, they can no where be the subjects of insurance; having vanished, as already observed, from the ocean: but at Lloyd's Coffee House, cargoes brought by the indirect voyage from those now hostile colonies, under neutral colours, are insured as follows; from Havannah, to a port in North America, 3 per cent.; from North America to Spain, the like premium; together 6 per

cent.*: and I apprehend there is little or no difference, in the insurance of a like circuitous voyage from the French Windward Islands to France. Of course, when the voyage is really to end at a neutral, instead of a belligerent port, in Europe, the premium on the latter branch of it, is rather lessened than increased.

The compound premium of insurance with convoy, or the long premium, as it is called, is not easily reducible to its proper absolute value, for the purpose of this comparison; since the risque of missing convoy, is compounded of too many chances, and combinations of chances, of various kinds, physical, commercial, and political, to be averaged by any calculation: but since the assured, in the case of loss, as well as in that of missing convoy, has no return of premium, and the return is always, with a deduction of the difference between pounds and guineas, or 5 per cent. which is retained by the underwriter or broker, the premium of 10 to return 5, may be estimated at near 7 per cent., and that of 8 to return 4, about 1 per cent. lower.

* This statement has reference to the month of August last, when the Author can with confidence assert that these were the current premiums. He understands that they have since been raised, in consequence of the recent decisions in the Prize Court, which have been already noticed. See Appendix (H).

The consequence of these premises is, that the sugars of Cuba are insured on their circuitous carriage to Spain at a less expence in the proportion of 6 to 7, than the sugars of Jamaica to England; and those of Martinique and Guadaloupe, probably, are insured by a like route to France, on terms nearly equal to the value of the long premium, on the direct voyage from our own Leeward Islands.

But this is a conclusion far short of the true result of the comparison: for the English merchant or planter, has also to pay the convoy duty, which is evidently an additional price of his insurance from the war risques of the passage.

The convoy duty on the outward voyage to the West Indies, is no less than four per cent.; on the homeward voyage, there is at present no duty expressly for the protection of convoy; but a new war tax by way of advance on the amount of old duties, has been imposed on sugars imported, and on all other articles of West India produce; part of which advance was understood to be a substitute for an express convoy duty, and on that principle, it is not wholly drawn back on exportation.

It would require an intricate calculation, as well as data not easy to obtain, to determine what is the amount of this charge to the im-

porter, if reduced into a specific tax for the protection of convoy. I will, therefore, suppose it to be equal to the convoy duty on the outward voyage: or what will equally serve our purpose, let the insurance on an outward voyage to the West Indies be supposed to be the same in point of premium, as in fact it nearly, if not exactly is, with the insurance homeward: then the whole price of protection to the English West India shipper, compared with that for which the enemy planter or merchant, is insured by the same underwriters, on the passage of his goods to or from the immediate neighbourhood of the same islands, is in the Jamaica trade, as 11 to 6, and in the Leeward Island trade, as 10 to 6, a difference against us, computing on the higher premium of above 45 per cent. in the former case, and 40 per cent. in the latter.

But if we separate the price of the sea risque, or the warranty against those dangers which are common both to peace and war, from the war risque, or price of the insurance against detention or capture by an enemy, the difference will be found still more highly adverse to that shipper, whose sovereign is master of the sea: for as the premium of insurance from Martinique to France, before the war, was 3 per cent., while, from the British islands in the same part of the West Indies, it was only 2; the advance occasioned

by the war to the British shipper, convoy duty being reckoned as insurance, is no less than eight-tenths of the whole existing charge, or a rise on the peace premium of 400 per cent.; while to the enemy, the advance is only three-sixths, or 100 per cent. on the same mode of computation.

An objection here may naturally arise, to which I regret that a shameful but conclusive answer, can be given. Since the rates of insurance which I have mentioned as the current prices of protection to the commerce of our enemies, when carried on under neutral colours, are those which are paid in this country, to British underwriters, and in insurance on the property of enemies is illegal, the hostile proprietor may be thought, not to be effectually secured; for should his secret be, as in the event of capture it sometimes is, discovered, the insurance will be void.

Neutralizing agents, I first answer, are not so incautious, after twelve years experience in their business, and in the practice of the British prize courts, as to expose their constituents very frequently to detection. But such as this risque is, the masqueraders have found an effectual mean of avoiding it. Though a strange and opprobrious truth, it is at Lloyd's Coffee House perfectly notorious, that our underwriters consent to stand

between the naval hostilities of their country, and the commerce of her disguised enemies, by giving them an honorary guarantee against the perils of capture and discovery.

The mode of the transaction is this—A policy is executed, such as may be producible in any court of justice; for the property is insured as neutral: but a private instrument is afterwards signed by the underwriters, by which they pledge themselves, that they will not, in case of loss, dispute the neutrality of the property, or avail themselves of any sentence pronouncing it to be hostile. Sometimes, a verbal engagement to this effect, is thought sufficient, but it has now become a very general practice to reduce it into writing; and in the one mode, or the other, these releases of the warranty or representation of neutrality, are almost universal. It is true, such stipulations are not binding in point of law: but every one knows, that at Lloyd's Coffee House, as well as at the Stock Exchange and Newmarket, those contracts, which the law will not inforce, are on that very account, the most sacred in the estimate of the parties, and the most inviolably observed.

The enemy, therefore, has as full security for his low premium, as the British importer for his high one; nor is the comparative result of our premises shaken by the expence of this special

addition to the policy; for in the rates of insurance which I have given, the extra charge of the honorary stipulations are included. For six per cent. the British underwriter, will warrant Spanish property, knowing it to be such, from the Havannah to Spain, by way of America; though he receives what is equal to seven, on British property, of the same description, carried with convoy, and in far better bottoms, from Jamaica to London.

The proportion of this premium, which may be reckoned as the price of the secret undertaking, is, I understand, one per cent. It cannot be much more; since the excess of the whole war premium above that which was paid on the direct voyage in time of peace, is only two per cent. The point is of no importance to our calculation; but it is striking to reflect, how small an additional premium is enough to compensate the insurer for the risque of the detection of hostile property under the neutral cover, in this commodious new invented course of the colonial trade. Can we wonder that Buonaparte should be indignant and clamorous at the late attempts of our prize court to restrain it.

The underwriters of America have pretty nearly agreed with our own, in the appreciation of the trivial danger from British hostilities, in this great branch of commerce. In July and August last,

the average premiums at New York and Philadelphia, on the separate branches of the double West-India voyage, without any warranty of neutrality, were about 3½ per cent. or 7 in the whole, from the West Indies by way of America to Europe. Insurance in that country, is naturally a little dearer than in England; and the rates of premiums at Lloyd's, probably regulate, with an advance of about one per cent. in general, the price of insurance in the United States.

It is impossible here to abstain from some digressive remarks, on the conduct of the British underwriters. They are, certainly, in general, very respectable men; and comprise within their body, merchants of great eminence in the most honourable walks of commerce. It is fair to presume, therefore, that their common concurrence in any practice contrary to the duties of good subjects, and upright men, can only proceed from inadvertency or mistake. I would intreat them then to reflect seriously, on the nature and consequences of these honorary engagements, falsely so called, into which the secret agents of our enemies have seduced them.

Let me remind them of the moral obligation, of obeying, in substance, as well as in form, the law of their country; and that the rule which forbids the insurance of an enemy's property, not having been founded solely on a regard to

the safety of the underwriter's purse, they have no private right to wave its application.

Some persons, perhaps, may find an excuse or palliation of this practice, to satisfy their own consciences, in a doubt of the public utility of the law, which they thus violate or evade; for specious arguments, have been heretofore offered, to prove that a belligerent state, may advantageously permit its subjects to insure the goods of an enemy from capture; and that pestilent moral heresy, the bane of our age, which resolves every duty into expediency, may possibly have its proselytes at Lloyd's, as well as at Paris. With such men as have imbibed this most pernicious error, I have not time to reason on their own false principles; though the notion that it is politic to insure an enemy, against our own hostilities, is demonstrably erroneous; and seems as strange a paradox as any that the vain predilection for oblique discovery ever suggested. I can only offer to them a short argument, which ought to be decisive, by observing, that the wisdom of the legislature, and of our ablest statesmen in general, has concluded against these insurances on political grounds; otherwise they would have been permitted, instead of being, as they are, prohibited by law*.

* The prohibition of the last war, 33 George II. cap. 27. s. 4. has not, I believe, yet been renewed. Perhaps, during

But I conjure the British underwriters to reflect, that there is a wide difference, both political and moral, between the insurance of an enemy's property fairly passing on the seas as such, in his own name; and the insurance of the same property under a fraudulent neutral disguise. By the former transaction, indeed, the law is more openly violated; but in the latter, the law-breaking and clandestine contract, is, in effect, a conspiracy of the underwriter with the enemy and his agents, to cheat our gallant and meritorious fellow subjects, the naval captors; as well as to frustrate the best hopes of our country, in the present very arduous contest.

Besides, by what means is the safety of the underwriters in these secret contracts consulted! It will not, it cannot, be denied, that instead of the paltry considerations for which they now consent to release the warranty of neutrality, they

the pressure of parliamentary business, which has prevailed ever since the commencement of the present war, it has escaped the attention of government. The illegality of insuring hostile property, stands, however, on common law principles, independent of any positive statute; as has long since been solemnly decided. The use of that act was not to invalidate the policy, but to impose specific penalties on the insurer of an enemy's goods; and if it should be revived, the indirect method of accomplishing the illegal object by a secret undertaking, will, I trust, be made at least equally penal with the direct and open offence.

would require more than double the open premium for that release, if they did not rely on the effect of those perjuries and forgeries by which capture or condemnation is avoided. The underwriter, therefore, who enters into the clandestine compact, is an accessary to those crimes.

But is this all? Does he not directly contract for, and suborn, as well as abet them? For whose benefit, and at whose instigation, are those false affidavits, and fictitious documents, transmitted from the neutral country, which are laid before the courts of prize in these cases, as evidence of the property, after a decree for further proofs? The claimant receives the sum insured from the underwriter, and allows the latter to prosecute the claim for his own reimbursement; and for that purpose the necessary evidence is furnished by the one, and made use of by the other, to support at Doctor's Commons the fact of a representation, which at Lloyd's Coffee House is known to be false.

It may indeed, be alleged, that there are often other reasons with the assured, for asking the underwriter to wave the question of neutral property, than a consciousness that the goods belong in fact to an enemy. Courts, it may be said, are liable to be mistaken on that point; and the delay attending its investigation, may be injurious.

Pretences like these can never be wanting, to

palliate any indirect and disingenuous transaction, that has for its object the concealment of an illegal purpose. To the gamester, the stock jobber, and the usurer, they are perfectly familiar. Should it, however, be admitted, that such specious reasons are sometimes the real motives of the assured, and that they are commonly held forth to the underwriters as such, (which, I admit, is probable enough; for it is not likely that the enemy's agent often needlessly violates decorum, so far as to announce openly the true character of his principal,) still the defence would be extremely weak. That enemies, very often at least, are the real proprietors in these cases, is too natural, and too frequently confirmed by actual detection, to be seriously doubted: besides, our London insurers are not so ill informed, as to be at a loss for a shrewd guess in regard to the national character of the true owners in the policy, from the nature of the transaction itself, and the known connections of the agents. In the insurances on property engaged in the collusive commerce which I have described, the secret engagement has become almost universal. If, then, any considerable part of this property is known to be hostile; how can our underwriters be excused by the assertion, supposing it true, that much of it is really neutral (I)?

(I) See Appendix.

This bad and dangerous practice, however, is not peculiar to the policies on colonial produce and supplies, but extends to almost every other species of insurance upon commerce, that is now fraudulently carried on under neutral colours. Almost every contest in our prize courts, respecting property so insured, becomes an unnatural struggle between British captors, fairly asserting their rights under the law of war; and British underwriters, clandestinely opposing those rights under cover of neutral names. Every sentence of condemnation, in such cases, is a blow, not to the hostile proprietor, but to our own fellow subjects.

If the danger of disloyal correspondence, in order to prevent or defeat a capture, if the augmented means of imposition on the courts of prize, or if the cheap and effectual protection given to the enemy, be considered, in either view, this bad practice ought to be immediately abolished.

But there is a still more important and sacred reason for its suppression. If neutral merchants will violate the obligations of truth and justice, in order to profit unduly by the war, the societies to which they belong, will soon feel the poisonous effects, in the deterioration of private morals; for habits of fraud and perjury, will not terminate with the neutralizing employments that produced

them. But with the profit which redounds to them and their employers, let them also monopolize the crimes. Let us not suffer at once, in our belligerent interests, and in what is far more valuable, our private morals, by sharing the contamination; let us not be the accomplices, as well as victims of the guilt.

Since it is not enough, that the engagements in question are void in law, they ought to be prohibited, under severe penalties, as well on the broker, who negotiates, as on the underwriter, who subscribes them.

Returning from this digression, let us resume for a moment our comparative view of English, and French or Spanish commerce, as to the expence of carriage during war between the West Indies and Europe.

There is one remaining head of expence attending the importation of colonial produce, under which it may possibly be supposed, that the enemy sustains a loss, more than equivalent to his comparative advantages in other respects, I mean the commission, or factorage: for it cannot be disputed, that the fraudulent must be compensated more liberally, than the honourable, service.

I cannot pretend with certainty to state the average price of that collusive agency, the business of which is called "neutralization," either

in this or any other branch of trade; but there is every reason to conclude, that it is by no means equal to those differences in the rate of insurance, which have been shewn to be so favourable to the enemy. I am credibly informed, that in some European branches of trade, it is reduced to two, and even to one, per cent. on the amount of the invoice; and there seems no reason why the price of conscience should be higher in one transaction of this kind than another, except in proportion to the profit derived by the purchaser.

But here it may perhaps be objected, that I am building on an hypothesis, the truth of which has not hitherto been proved; namely, that the colonial produce, the subject of the commerce in question, though ostensibly neutral property, is carried on the enemy's account.

Independently of the discoveries frequently made in the prize courts, there are strong presumptive grounds for supposing that this is commonly the case, not only in the colonial trade, but in every other new branch of commerce, which the neutral merchants have acquired during the war. The general views and interests of the parties to these transactions, must strongly incline them to that fraudulent course; and the facility of concealing it, is become so great, that nothing, for the most part, can induce them to

ship *bona fide* on neutral account, but a principle which, unhappily, experience proves to be extremely rare among them—respect for the obligation of truth.

Besides, where can America, and the other neutral countries, be supposed to have suddenly found a commercial capital, or genuine commercial credit, adequate to the vast magnitude of their present investments?

By what means, could the new merchants of the United States, for instance, be able to purchase all the costly exports of the Havannah, and the other Spanish ports in the West Indies, which now cross the Atlantic in their names? Yet what are these, though rich and ample, when compared to the enormous value of that property which is now carried, under the flag of this new power, to and from every region of the globe?

Those who are but superficially acquainted with the subject, may perhaps be ready to suppose, that the frauds which they hear imputed to neutral merchants at this period, are like those which have always prevailed in every maritime war; but the present case, in its extent and grossness at least, is quite without a precedent.

Formerly, indeed, neutrals have carried much of the property of our enemies; and great part of what they carried was always ostensibly their

own; but now they carry the *whole* of his exports and imports, and allege the *whole* to be neutral. It rarely, if ever happens, that the property of a single bale of goods is admitted by the papers to be hostile property. We are at war with all those who, next to ourselves, are the chief commercial nations of the old world; and yet the ocean does not sustain a single keel, ships of war excepted, in which we can find any merchandize that is allowed to be legitimate prize.

France, Spain, Holland, Genoa, and the late Austrian Netherlands, and all the colonies and transmarine dominions of those powers, do not, collectively, at this hour, possess a single merchant ship, or a merchant, engaged on his own account in exterior commerce, or else the neutral flag, is now prostituted, to a degree very far beyond all former example.

Those who dispute the latter conclusion, must ask us to believe, that all the once eminent mercantile houses of the great maritime countries now hostile to England, are become mere factors, who buy and sell on commission, for the mighty, though new-born merchants of Denmark, Prussia, and America; for in all the numberless ports and territories of our enemies, there is not one man who now openly sustains the character of a foreign independent trader, even by a single adventure. Not a pipe of brandy is cleared

outwards, nor a hogshead of sugar entered inwards, in which any subject of those unfortunate realms, has an interest beyond his commission.

If the extravagance of this general result, did not sufficiently shew the falshood, in a general view, of the items of pretence which compose it, I might further satisfy, and perhaps astonish the reader, by adducing particular examples of the gross fictions, by which the claims of neutral property are commonly sustained in the prize court.

Merchants who, immediately prior to the last war, were scarcely known, even in the obscure sea-port towns at which they resided, have suddenly started up as sole owners of great numbers of ships, and sole proprietors of rich cargoes, which it would have alarmed the wealthiest merchants of Europe, to hazard at once on the chance of a market, even in peaceable times. A man who, at the breaking out of the war, was a petty shoemaker, in a small town of East Friesland, had, at one time, a hundred and fifty vessels navigating as his property, under Prussian colours.

It has been quite a common case, to find individuals, who confessedly had but recently commenced business as merchants, and whose commercial establishments on shore were so insigni-

ficant, that they sometimes had not a single clerk in their employment, the claimants of numerous cargoes, each worth many thousand pounds; and all destined at the same time, with the same species of goods, to the same precarious markets *.

The cargoes of no less than five East Indiamen, all composed of the rich exports of Batavia, together with three of the ships, were cotemporary purchases, on speculation, of a single house at Providence in Rhode Island, and were all bound, as asserted, to that American port; where, it is scarcely necessary to add, no demand for their cargoes existed †.

Adventures not less gigantic, were the subjects of voyages from the colonies of Dutch Guiana, to the neutral ports of Europe; and from the Spanish West Indies, to North America. Vessels were sent out from the parsimonious northern ports of the latter country, and brought back, in abundance, the dollars and gold ingots, of Vera Cruz, and La Plata. Single ships have been found returning with bullion on board, to the

* Cases of the Bacchus, the Bedford, the London Packet, the Pigou, &c. &c. claimed for houses in Boston and George Town in Maryland, at the Cockpit, last war.

† Case of the Reemsdyke.

value of from a hundred, to a hundred and fifty, thousand Spanish dollars, besides valuable cargoes of other colonial exports*.

Yet even these daring adventurers have been eclipsed. One neutral house has boldly contracted for all the merchandize of the Dutch East India Company at Batavia; amounting in value to no less than one million seven hundred thousand pounds sterling†.

But have not, it may be asked, the means of payment, for all the rich cargoes which have been captured, undergone a judicial investigation? Yes, such slender investigation as the prize court (which of necessity proceeds on the *ex parte* evidence of the claimants themselves) has power to institute; the effect of which has been, to produce a tribe of subsidiary impostures, not less gross than the principal frauds, which they were adduced to support.

Sometimes a single outward shipment, has been made to fructify so exuberantly in a hostile market, as to produce three return cargoes, far richer in kind than the parent stock; with two additional ships, purchased from the enemy, to assist in carrying home the harvest. In other

* Cases of the Gladiator, the Flora, &c. at the Cockpit.

† Case of the Rendsbborg, 4 Robinson 12.

cases it has been pretended, that bills of exchange, or letters of credit, remittances which usually travel from Europe to the colonies, and scarcely ever in the reverse of that direction, were carried to the East Indies, or to a West India island, and applied there in the purchase of the captured cargoes; or that the master or supercargo, a mere stranger perhaps in the place, found means to negotiate drafts to a large amount on his owners.

A pretence still more convenient and comprehensive, has been in pretty general use—that of having an agent in the hostile port, whose ostensible account current may obviate all difficulties, by giving credit for large funds remaining in his hands, the imaginary proceeds of former consignments, which he invests in the colonial exports.

In other cases, the master or supercargo, in order to give colour to the pretended payment, has really drawn bills of exchange in the colony, payable at the port of destination; but then there has been a secret undertaking that they shall be given up, on delivery of the cargo to the agent of the hostile proprietor; and sometimes, to guard against breach of faith by the holders of such bills, and possible inconvenience to the drawers, they have been made payable at

a certain period after the arrival of the ship and cargo; so that in the event of capture and condemnation, they would be of no effect.

A still grosser device has at other times been employed, and was in very extensive use, by the planters of the Dutch West Indies resident in Europe, before the conquest of Surinam, and their other colonies in Guiana. Contracts were made in Holland with neutral merchants, for the sale of large quantities of sugar, coffee, and other produce, at stipulated prices, which were supposed to be paid in Europe; and, thereupon, directions were sent to the attornies or managers of the estate in the colony, to deliver the produce so sold to the order of the neutral purchasers.—Vessels, chartered by the latter, were sent out, chiefly in ballast, with a competent number of these orders on board; by means of which, the valuable cargoes of produce received in the colony, were ostensibly acquired. The same pretences were also adopted by some Spanish colonists of Cuba.

A man must be profoundly ignorant of the nature of such commodities, and of the colonial trade in general, to suppose that these contracts could be sincere. Such are the varieties in the quality, and, consequently, in the value, of sugar and other West India produce; and so greatly unequal are different parcels, the growth even of the same plantation and season, to each other;

that, to fix the price while the particular quality is unknown, would be preposterous; and would place the buyer quite at the mercy of the seller, or his agents.—Besides, from the quick fluctuations of price in the European markets, such prospective contracts as these, would be downright gaming; unmixed with any portion of sober commercial calculation.—A man might as well bargain for English omnium in Japan.

Without enumerating any more of these coarse impostures, I would remark, that the resort to them, is a striking proof of the difficulty these neutralisers found in making out a credible case; and that which gave occasion for them in the colonial trade, forms alone, a strong presumption against the general truth of their claims. I mean the known fact, that the cargoes carried to the hostile colonies, in general, are utterly insufficient to pay for the rich returns. In the trade of the sugar islands, especially, if the whole imports from Europe and America were taken collectively, they would hardly be equal in value to one-sixth part of the exports. (K)

For what purpose, it may be reasonably demanded, should the planter sell more of his produce in the colony than is requisite to pay for his supplies?—It is not there, that his debts are to be paid, or his savings laid by; but in the mother

(K) See Appendix.

country; and it is in that country also, or in some part of Europe alone, that his produce can be advantageously sold. If, then, he sells more of his produce in the colony, than will serve to defray the expences of his estate, it can only be to avoid the risk of sending it specifically on his own account, to Europe.—But if a fictitious sale will almost equally avoid that risk, it is obviously a far more advantageous expedient than the other; for in what form can he remit the proceeds, that of bills of exchange excepted, without encountering an equal danger on the passage? yet in taking bills, especially from such persons as usually conduct this trade, he may sustain a risk more formidable than that of capture and discovery; while he relinquishes to the drawer, the benefit of the European market.

"But," it may be said, "these claims of neu-" tral property have often been established by " the decrees of the supreme tribunal of prize " —they were therefore believed, by those who " were the most competent judges, to be true."—I admit that they have been so established, and even in some of the cases which I have instanced as peculiarly gross; but not because they were believed—it was only because they were supported by such direct and positive testimony, as judges bound to decide according to the evidence before them, are not at liberty to reject.

The presumption that great part of the colonial produce goes to Europe on account of the enemy, is strongly fortified by the frequency of those collusive double voyages, the nature of which has been fully explained.

Let it be admitted, that a real neutral speculator in West Indian produce, might wish to buy in the colony, as well as to sell in Europe; still there seems no adequate reason for his choosing to send forward to the latter, at a considerable risk in the event of detection, the identical produce which he bought in the former, after it has been actually landed in his own country; when he might commute it, by sale or barter, for other produce of the same description, which might be exported with perfect security, and without the expence of perjury or falsehood.

On the other hand, supposing the property to remain in the enemy planter, from whom it was ostensibly purchased, the obstinate adherence to these double voyages, and the artifices employed for their protection are perfectly natural. To exchange his produce in the American market, would be a trust too delicate to be willingly reposed by the planter in his neutralizing agent: and besides, the identity of the goods shipped in the West Indies, with those which shall be ultimately delivered to himself or his consignee in Europe, must be essential not only to his satisfaction and

security; but also to the obtaining those abatements or privileges on the importation into the mother country, to which the produce of its own colonies are entitled.

After all, let it not be supposed that the important conclusions to which I reason, depend on the fact, that the trade in question is carried on chiefly, or in some degree, on account of our enemies. Were the contrary conceded, very little, if any, deduction need, on that score, be made from the sum of the mischiefs here ascribed to the encroachments of the neutral flag.

If the hostile colonies are supplied with all necessary imports, and their produce finds its way to market, the enemy is effectually relieved from the chief pressure of the war; even though both branches of the trade should pass into foreign hands, in reality, as well as in form: nor is this always, perhaps, the least advantageous course.

Let it be supposed, that the neutral merchants really buy on their own account, at Martinique and the Havannah, the sugars which they sell at Bourdeaux and at Cadiz. In that case, their inducement is found in the hope of a commercial profit, instead of a factor's commission; and it evidently depends on the average extent of that profit, compared with the ordinary commission on neutralization, whether the enemy is less ad-

vantageously assisted in this mode, than the other.

Let the common commission, for instance, be supposed to be 5 per cent.: then, if sugars bought for 1000 dollars at the Havannah, nett, on an average, 1050 dollars, clear of freight and all other expences, in the market of Cadiz, it is indifferent between the enemy and the neutral merchant, whether the latter imports on his own account, or as agent for a Spanish subject. The service done to the individual enemy, and to the hostile state, is, in both cases, exactly the same; and so is the detriment sustained by the adverse belligerent, against whom the commerce of the colony was protected.

Is it, then, likely, that neutrals trading on their own account, would obtain a larger average profit, than the amount of a neutralizing commission? —Rather, I conceive, the reverse: for it is the natural and speedy effect of competition, in every branch of trade, to reduce the average profits of the adventurers, taken collectively, to the lowest rate at which any competitor can well afford to prosecute the business; and even below that level. More especially is this the event, when the gains are very precarious, and very unequally divided: for the gaming propensity, induces men to give for chances in commerce, as well as in the lottery, much more than they are

intrinsically worth.—Now, the enemy who exports from the colony, and imports into the mother country, produce of his own growth, paying a neutralizing commission on the carriage, is a competitor with the genuine neutral speculator in the same market, on equal terms, the difference of that commission excepted; and as the planter, in sending home his own produce, looks to no mercantile gain on the voyage, but merely to the remittance of his property, the commission must soon become the measure of the average profit to neutral importers in general; and the gains of the speculator, will even have a tendency to fall below, though they will not permanently exceed, that standard. The commission will also feel the depreciating effect of competition; so that this regulator will, itself, progressively decline; but its fall will, at the same time, further depress the speculator's profit, and in an equal degree.

If this reasoning, which seems to stand on the plainest principles of commercial arithmetic, be just, the profits of the genuine neutral merchants in his trade, must at present be very low: for let it be considered, that it has now been prosecuted by every neutral nation, no less than twelve years; a brief interruption during the late peace excepted; so that competition has had ample time to work its natural effects. The enemy,

probably therefore, is a gainer at present, rather than a loser, when delivered from the necessity of being his own exporter and importer, by a real sale to, and repurchase from, the neutral merchant.

That this commerce, however conducted, is not a very costly vehicle for the colonial produce of a belligerent inferior at sea, is manifest from a single and highly important fact, to which I would next particularly call the reader's attention. (L)

*The produce of the West Indies, sells cheaper at present, clear of duties, in the ports of our enemies, than in our own**.

Though the preceding statements and calculations naturally lead to this result; it will, perhaps, be regarded with some astonishment. But the emotions that it ought to excite, are rather those of indignation and alarm.

We defend our colonies at a vast expence—we

(L) See Appendix.

* This statement also has reference to the month of August last, since which period, I believe, the late decisions in our prize courts have occasioned a material change. At that time, and for many preceding months, it was generally a losing game to export West India produce from this country to Amsterdam or Flanders, even when the whole duty was drawn back; for the importer of French and Spanish produce of a like description, could afford to sell on cheaper terms; yet the latter had paid considerable duties in the colonies it came from, which had not been drawn back.

maintain, at a still greater expence, an irresistible navy; we chase the flag of every enemy from every sea; and at the same moment, the hostile colonies are able, from the superior safety and cheapness of their new-found navigation, to undersell us in the continental markets of Europe.

Where is the partial compensation now, that our planters used to find, for the heavy burthens and dangers of war? If the cost of their supplies were enormously enhanced, if war taxes pressed them hard, if freight and insurance were doubled or trebled, if their interior defence became expensive as well as laborious, and if they were sometimes invaded or plundered by a hostile force, still their rivals and enemies in the neighbouring islands were in no capacity to mock at, or profit by, these disasters. On the contrary, the superior pressure of the war upon the hostile colonies, insured to our own, the benefit of markets more than commonly advantageous. While the benefit of the drawback gave them at least equality with their rivals, in the foreign and neutral markets of Europe, in regard to fiscal charges; in other respects the differences were all in their favour. The foreign sales, therefore, were highly beneficial; and the home market, relieved by a copious exportation from all temporary repletions, gave them in its large and ever

advancing prices, some indemnity for the evils of the war.

By the present unprecedented and artificial state of things, this compensation has been narrowed, and is likely to be totally lost. Much of the embarrassment under which our West India merchants and planters have laboured, and much of that silently progressive ruin in our old colonies, the nature and extent of which are too little known in England, may be traced perhaps to this singular source. By circumstances which it would be too digressive to explain, the evil has been much retarded in its progress, and is only now beginning to operate with its natural force; but, unless the cause is removed, it will soon be severely felt.

I am well informed, that the business of the sugar refiner, the great customer of the West India merchant, has, of late, been very unsuccessful. Instead of obtaining a large annual profit as formerly, his accounts for the last season have been wound up with a serious loss.

A symptom more clearly indicatory than this, of the ill effects which I wish to expose, cannot be required.—From what sources result the chief gains of the sugar refiner? From an advance pending his process, in the prices of the raw, and, of course, of the refined commodity; and this is chiefly occasioned by an increase in the

difference of price between the home and the foreign market, when that difference is favourable to exportation: for the foreign, in great measure regulates the home, demand. When, therefore, the price of sugar in the continental markets is progressively declining, in the proportion it bears to the existing price in this country, which, of course, will naturally happen when the supply from the foreign colonies is progressively either enlarged or cheapened, the British refiner will find, as he has lately done, a loss instead of a profit on his business. The consequences of such a progress, if continued, are not less obvious than alarming.

It appears, then, on the whole, that our enemies carry on their colonial commerce under the neutral flag, cheaply as well as safely; that they are enabled, not only to elude our hostilities, but to rival our merchants and planters, in the European markets; and that their comparative, as well as positive advantages, are such, as to injure our manufacturers, and threaten our colonies with ruin.

That the hostile treasuries are fed by the same means with a copious stream of revenue, without any apparent pressure on the subject; a revenue which otherwise would be cut off by the war, or even turned into our own coffers, is a most

obvious and vexatious consequence. Without the charge of defending his colonies, or their trade, by a single squadron or convoy, the enemy receives nearly all the tribute from them, that they would yield under the most expensive protection.

Let it not be supposed, that even such produce as is imported *bona fidè* into neutral countries, and sold there without reshipment, fails to yield its portion of revenue to the hostile state.

To prevent such a loss, our enemies have had recourse to various expedients; but chiefly to those, of either charging and receiving duties in the colony, on the exportation of the produce from thence; or taking bonds from persons resident in the mother country, in respect of every ship clearing out for, or intended to carry produce from the colonies, with condition either to land such produce in a port of the mother country, or pay the duties there.

Sometimes, in order to encourage the performance of engagements to import into the mother country, which the proprietor, though a subject, might, for greater safety, wish to violate, the bond has been conditioned for payment of double tonnage or duties, in the event of the cargo being landed in any foreign port*.

* Cases of the Vrow Margaretta, Marcusson; Speculation, Roelofs, &c. at the Cockpit, 1801.

But Buonaparte, finding, I suppose, that the best way of securing an importation into France, was the actual previous payment of the whole French import duties, appears now to have prescribed that course. By custom-house certificates, found on board a Gallo-American East Indiaman, from the Isle of France, lately condemned in the Admiralty, it appeared, that the proprietors had actually paid all the French import duties in advance, in the colony, and were, therefore, to be allowed to import the cargo into Nantz, duty free. Yet this ship, as usual, was ostensibly destined for New York*.

Of the Spanish treasure shipped from South America, a great part may be reasonably regarded as nett revenue passing on the king's account; and whatever wealth the new world pours in this or any other form into his treasury, is, no doubt, an immediate source of supply to the war-chest of Buonaparte. We went to war with Spain for the sake, in great measure, of preventing this evil, yet suffer the encroachment of neutral commerce to defeat that great object of the quarrel. We cannot stop the subsidies on the Pyrennes, and if we are to be prevented by the neutral flag from stopping them on the Atlantic,

* Case of the Commerce, Park, master, at the Admiralty, August, 1805.

our rupture with the court of Madrid, however just, seems to have been improvident and useless. His Spanish majesty is not even at a loss to convert into specie, and draw over to Europe, those more cumbrous subjects of revenue, which he receives beyond the Atlantic; or to commute them there, in such a manner as may serve for the support of the colonial government, by the aid of his neutral merchants. To a single commercial house, he sold, or pretended to sell, all the tobacco in the royal warehouses in three of his South American provinces, for payment in dollars, or in such goods as could easily and advantageously be converted into specie in that country*.

After attending to these facts, it will not be easy to discover in what way the hostile governments feel the pressure of the war, in regard to their colonial commerce.

The private merchants, even, scarcely seem to sustain any serious loss, except that their ships are unemployed. But transfers, real or ostensible, to neutrals, have, for the most part, obviated this inconvenience: and the government itself has, no doubt, been a liberal freighter, or purchaser, of such disengaged native bottoms as were fit for the invasion of England; a service for which our neutral friends have obligingly set

* Case of the Anna, Cartharina, 4 Robinson, 107. See Appendix (M).

them at leisure. The usurper, therefore, might perhaps, be as popular among his merchants, as he seems anxious to be, if it were not for those naval blockades, against which he is incessantly raving. If the British courts of admiralty would in that respect obligingly adopt his new code of maritime law, the commerce of France might cease to labour under any uneasy restraint.

Hitherto, we have considered the abuse of neutral rights, chiefly, as a protection unduly imparted to our enemies, in respect of their colonial interests, their trade, and commercial revenues.

Were this great frustration of our maritime efforts in the war, the only prejudice we sustain, the evil would be sufficiently great. It would still be a wrong highly dangerous to our future safety, and adverse to the best hopes of our allies; for to protect the financial means of Buonaparte and his confederates, is to nourish a monster that threatens desolation, not to England only, but to Europe.

The mischief, however, by no means terminates in sustaining the French exchequer; it strikes in various directions at the very vitals of our national security; it tends powerfully and directly to the depression of our maritime power, and to the exaltation of the navy of France.

Let it be considered, in the first place, that by this licentious use of the neutral flags, the enemy is enabled to employ his whole military marine, in purposes of offensive war.

He is not obliged to maintain a squadron, or a ship, for the defence of his colonial ports; nor does he, in fact, station so much as a frigate, in the East or West Indies, except for the purpose of cruizing against our commerce. The numerous and frequent detachments of the convoy service, are also totally saved.

While a great dispersion of his maritime force, and the consequent risk of its defeat and capture, in detail, are thus avoided, he obtains by its concentration near the seat of empire a most formidable advantage; since the British navy has to guard our colonies, and our commerce, in all its branches, and is, consequently, widely dispersed in every quarter of the globe.

During the last war, such considerations might seem of little moment, because the united marine of France and her confederates, was reduced to so very feeble a state, and so little effort was made for its restoration, that no advantage of this kind could raise it from contempt; much less render it a subject of serious apprehension.

But now, the case is widely different. The re-establishment of the French navy, and those of Spain and Holland, is a work on which Buo-

naparte is not only eagerly intent; but in which he has already made a very alarming progress. Already, the great inferiority of the confederates, in point of actual force, has begun to disappear; and so vast are their means of naval structure and equipment, that except through the precarious diversion of the approaching continental war, we cannot long expect to be superior to their united navies in the number of our ships, though we may hope long to be so, in the skill and bravery of our seamen *.

On our own side, also, I admit, improvement is to be expected; for our Admiralty is happily placed under the auspices of a most able and active minister, who is indefatigable in his efforts for the increase of the navy; and whose comprehensive knowledge of the whole business of the marine department, in all its ramifications, peculiarly well qualifies him for that momentous work.

The venerable age of Lord Barham has been

* It is right to remind the reader, that this passage is reprinted from an edition published before the battle of Trafalgar; but let not even that glorious event render us indifferent to considerations like these. It is not enough in the present times, that our enemy is in all points greatly inferior at sea; while that inferiority, on the degree of which our national safety perhaps depends, can be encreased, and rendered more hopeless.

supposed to be a drawback on his qualifications for office, by those only who are ignorant of his still energetic powers, both of body and mind. It may even be truly said, that the lapse of years, during which his knowledge of the civil business of the Admiralty has been matured by observation and experience, has made him the fitter for his present most arduous station. He resembles the old, but sound and healthy oak, which time has qualified for the most important uses of our navy, by enlarging its girth and its dimensions, without having at all impaired its strength or elasticity.

In calculating, therefore, on the effect of the enemy's exertions, I allow for every possible counteraction in our own. I suppose that not one slip in our public dockyards, or in those of the merchants, which is fit to receive the keel of a man of war, will be left unoccupied by the Admiralty, except from the want of means to employ it. But there are limits to the power of rapidly increasing in our navy, of which the public at large is not perhaps fully aware. All the knowledge and activity of Lord Barham cannot immediately replenish our magazines with certain materials necessary in the construction of large ships, of which there is a great and increasing scarcity, not only in England, but in every other

maritime country; and which nature can but slowly reproduce.

Buonaparte, from the immense extent of those European regions, which are now either placed under his yoke, or subjected to his irresistible influence, and from the effects of that commerce, falsely called neutral, which we fatally tolerate, is well supplied with the largest and best timber, and with abundance of all other materials for ship building; especially in his northern ports—Witness the grand scale of his preparations at Antwerp; where he has at this moment on the stocks, eight ships of the line, and many of inferior dimensions. In this new port, the destined rival of Brest and Toulon, he is rapidly forming large naval magazines, which the interior navigation alone may very copiously supply; and which he purchases in the countries of the North, chiefly with the wine and brandy of France, and with the produce of the hostile colonies, carried in neutral bottoms. I am well informed, that the naval stores which he purchased in the Baltic alone, in the year 1804, amounted in value to eighty millions of livres. In short, he is, conformably to the boast already quoted, employing all the resources of his power and his policy, for the augmentation of his marine; and has not incredibly declared, that before the commencement of a new year, he would

add thirty line-of-battle ships to the navy of France.

It is not easy to suppose, that the utmost exertions of our government can enable us to keep pace in the multiplication of ships, with all our united enemies; especially while they are enabled, by the neutralizing system, to preserve all the men-of-war they progressively acquire; keeping them safely in port, until deemed numerous enough to enter on offensive operations. Even when that critical period arrives, they will, no doubt, still choose to commit their commerce to the safe keeping of their neutral friends; and not hoist again their mercantile flags, till they have attempted to overpower, by concentrated attacks, the scattered navy of England.

There is, however, another grand requisite of naval war, not less essential than ships; and that is, a competent body of seamen to man them.

Here also the increase of our navy beyond ordinary bounds, is found to be no easy work; and here Buonaparte, happily for us, is not less at a loss; but that pestilent and copious source of evils, the abuse of neutral rights, in this most momentous point also, largely assists our enemies, and impairs our maritime strength.

The worst consequence, perhaps, of the independence and growing commerce of America, is the seduction of our seamen. We hear con-

tinually of clamours in that country, on the score of its sailors being pressed at sea by our frigates. But how have these sailors become subjects of the United States? By engaging in their merchant service during the last or the present war; or at most by obtaining that formal naturalization, which they are intitled to receive by law after they have sailed two years from an American port, but the fictitious testimonials of which are to be bought the moment they land in the country, and for a price contemptible even in the estimate, of a common sailor (N). If those who by birth, and by residence and employment, prior to 1793, were confessedly British, ought still to be regarded as his Majesty's subjects, a very considerable part of the navigators of American ships, are such at this moment; though, unfortunately, they are not easily distinguishable from genuine American seamen.

This is a growing, as well as a tremendous evil; the full consideration of which would lead me too far from the main object of these sheets. I must confine myself to its immediate connection with the abuse of neutral rights; and content myself with merely hinting in regard to its more comprehensive relations, that it is a subject

(N) See Appendix.

on which our municipal code is extremely defective.

The unity of language, and the close affinity of manners, between English and American seamen, are the strong inducements with our sailors, for preferring the service of that country, to any other foreign employment; or, to speak more correctly, these circumstances remove from the American service, in the minds of our sailors, those subjects of aversion which they find in other foreign ships; and which formerly counteracted, effectually, the general motives to desert from, or avoid, the naval service of their country.

What these motives are, I need not explain. They are strong, and not easy to be removed; though they might perhaps be palliated, by alterations in our naval system: but the more difficult it is to remove this dangerous propensity in our seamen; the more mischievous, obviously, is any new combination, which increases the disposition itself, or facilitates its indulgence. If we cannot remove the general causes of predilection for the American service, or the difficulty of detecting and reclaiming British seamen when engaged in it; it is, therefore, the more unwise, to allow the merchants of that country, and other neutrals, to encroach on our maritime rights in time of war; because we thereby greatly, and suddenly, increase their de-

mand for mariners in general; and enlarge their means, as well as their motives, for seducing the sailors of Great Britain.

There is no way of ascertaining how many seamen were in the employ of the powers at present neutral, at the breaking out of the last war; and how many at this time navigate under their flags; but could these data be obtained, I doubt not, it would appear, that they have been multiplied at least tenfold*; and to the increase, whatever be its amount, the relaxation of our belligerent rights has, certainly, in a great degree, contributed.

The legal and ordinary enlargement of neutral commerce, in time of war, would, indeed, have added greatly to the stock of American, as well as of Prussian, and Danish mariners; but when the great magnitude and value of the colonial trade are considered, and the many branches of navigation that, directly or indirectly, spring from it; the admission into that commerce may, perhaps, be fairly estimated to have given to those neutral nations in general, but pre-eminently to America, two thirds of the whole actual increase

* The ships and vessels of East Friesland, of 100 tons burthen, and upwards, prior to the present war, were estimated at 150; now they are supposed greatly to exceed 2000. In these, however, I presume, that few, if any, English mariners are engaged.

in their shipping. This extensive trade, it may further be observed, has, in the medium length of the voyages, and other known circumstances, peculiar attractions for our seamen ; and, what is still more important, it enables the merchant, by the richness of the cargoes in general, to earn a high neutralizing freight, and consequently to offer a tempting rate of wages.

It is truly vexatious to reflect, that, by this abdication of our belligerent rights, we not only give up the best means of annoying the enemy, but raise up, at the same time, a crowd of dangerous rivals for the seduction of our sailors, and put bribes into their hands for the purpose. We not only allow the trade of the hostile colonies to pass safely, in derision of our important warfare, but to be carried on by the mariners of Great Britain. This illegitimate and noxious navigation, therefore, is nourished with the life-blood of our navy.

Here again our views would be very inadequate, if they were not extended from our own direct losses, to the correspondent gains of the enemy.

The hostile navies, are more easily manned, through the same injurious cause which defrauds our own of its seamen. Having no commercial marine, their sailors can find no native employment, privateering excepted, but in the public

service; and it is notorious that very few of them are found on board neutral vessels*. The capacity therefore of Buonaparte and his confederates to man their fleets, must, in some points, be greater than if they were our equals at sea.

In former wars, our prisons were generally crowded with the mariners of France and Spain, taken for the most part on board of their merchantmen; but now, this drawback on their maritime resources, is wholly avoided. Except at the commencement of hostilities, we make not a single prisoner of war in any commercial bottom. As to their ships of war, they are so rarely to be found out of port, except when making depredations on our commerce, in the absence of any protecting force, that if the present system continues much longer, the British seamen, prisoners of war in hostile countries, will far outnumber their enemies of the same description, in our hands.

In the East, and West Indies, the effects of these

* This is a striking fact, well known to those who are conversant with the business of the prize courts. In the colonial trade especially, the chief subject of these remarks, it is rare to find among the private mariners on board a prize who happen to be examined, a single Frenchman or a Spaniard; though a large proportion of those who are taken on board American vessels, avow themselves to have been by birth, and by domicil anterior to the war, subjects of Great Britain.

advantages, on the side of the enemy, begin already to be severely felt. Buonaparte has often, and not untruly, boasted, that the injury done to our commerce by the privateers of the Isle of France, of Martinique, and Guadaloupe, has been extremely great. He might also have praised his good allies of Cuba, for equal activity. The little port of Baracoa alone, on the east end of that island, has no less than twelve privateers, who are continually annoying our trade in the Windward Passage *. Curacoa also and the harbour of Santo Domingo, are become most troublesome neighbours to Jamaica.

Can we wonder that the colonial ports should furnish so many cruizers? It will be a much greater cause of surprise, if they should not soon be multiplied tenfold. Nothing but the small degree of encouragement given by the Spanish government to offensive enterprises during the last war, and the known state of the French colonies at that period, could have saved our merchants and underwriters, from sooner smarting in this way very severely, through our complaisance to the neutral flag.

Let it be considered, that the Creole seamen domiciled in the hostile colonies, who are employed in time of peace in what may be called

* See an authentic account of their particular descriptions and force in the London Papers of September 17th, 1805.

the interior navigation of the West Indies, and the mariners of the isles of France and Bourbon, who usually pursue their occupation in the oriental seas, can now have no civil employment in those regions under their own flags; for the intercourse between the different colonies of the same state, as well as the colonial traffic with neighbouring foreigners, is, like the intercourse with Europe, carried on wholly in neutral vessels.

These seamen, though pretty numerous, especially in the Spanish settlements, very rarely engage under a foreign commercial flag; of which their religious prejudices as bigotted papists, and their personal insecurity, as being mostly of African extraction, are probably the principal causes. The entering on board privateers therefore, for the purpose of cruising against our commerce in the seas which they usually navigate, is with them a necessary, as well as lucrative occupation.

If it be asked, how are a sufficient number of vessels of war, and the means of equipping them, procured in the colonial ports of the enemy? I answer, that many of our merchant ships, which they take, are easily adapted to the privateering service; and that though we have not yet allowed neutrals to carry naval stores to the enemy, a sufficient quantity of them are clandestinely introduced by those obliging friends, under cover of their general trade. This is another

collateral ill effect of our fatal indulgence to neutral commerce; for it is easy to conceal under a general cargo of permitted goods, small parcels of a contraband kind; and so extensive is the trade of the colonies, in proportion to their demand of naval stores, that contributions from each neutral ship that arrives, small enough to pass as part of her own provision for the voyage, will make up an adequate total.

But so great has been the audacity of the neutral merchants, that they have actually sent ships constructed solely for the purposes of war, and pierced for the reception of guns, to the Havannah, and other ports of our enemies, for sale: and though it may astonish the reader, American claims for such vessels, when taken on the voyage, have been pertinaciously prosecuted, not only in our vice admiralty courts, but afterward in the court of appeals *. The argument was, that, though by our treaty with America, the materials of naval architecture are prohibited goods, yet ships ready built, not being expressly enumerated in the contraband catalogue, might be lawfully sent to our enemies, whether for carriage or sale.

Let us next regard this spurious neutral commerce in another view, as a great discouragement to our naval service.

* Case of the Brutus, Rutherford, master, at the Cockpit, July, 1804.

The wise, liberal, and efficacious policy of this country, has been, to vest the property of maritime prizes wholly in the captors; and hence, much of the vigilance, activity, and enterprize, that have so long characterized the British navy.

Let us give full credit to our gallant officers, for that disinterested patriotism, and that love of glory, which ought to be the main springs of military character, and which they certainly possess in a most eminent degree. But it would be romantic and absurd, to suppose that they do not feel the value of that additional encouragement, which his Majesty and the legislature hold out to them, in giving them the benefit of the captures they make. What else is to enable the veteran naval officer, to enjoy in the evening of his life, the comforts of an easy income; the father to provide for his children; or the husband for an affectionate wife, who, from the risques he runs in the service of his country, is peculiarly likely to survive him? By what other means, can a victorious admiral, when raised, as a reward of his illustrious actions, to civil and hereditary honours, hope to support his well earned rank, and provide for an ennobled posterity? The pension he may obtain will be temporary, and scarcely adequate even to his own support, in his new and elevated station. It is from the enemies of his country, therefore, that he hopes to

wrest the means of comfortably sustaining those honours, which he has gained at their expence.

As to the common seamen and mariners, the natural motives of dislike to the naval service, are in their breasts far more effectually combated by the hope of prize money, than by all the other inducements that are or can be proposed to them. The nautical character is peculiarly of a kind to be influenced by such dazzling, but precarious prospects. They reason, however, and calculate on the chances and the value of success; witness the proverbial remark, that a Spanish war is the best mean of manning our navy.

Never, surely, was the encouragement of our naval service more important than at the present period; and never were the rewards of that service more meritoriously or gloriously earned.—Yet what are now the rational hopes of our seamen, in regard to the benefit of prizes? On whatever station they may be placed, and whatever sea they may be crossing, they look out in vain for any subject of safe and uncontested capture.

Are they sent to the East or West Indies? These, though sickly, used to be lucrative stations; especially in a war with Spain: but now the rich exports of the hostile colonies present to them only the cup of Tantalus. They see the

same valuable cargoes passing continually under their sterns, which used formerly to make the fortunes of the captors; but the ensigns of neutrality now wave over them all, and prohibit a seizure.

Do they, in concert with the land forces, attack and conquer a hostile island, the reward of their successful valour is still wrested from them in the same vexatious way. They find none but neutral flags in the harbour, and none but property alleged to be neutral afloat*.

In short, except a small privateer or two, of little more value than may suffice to pay the charges of condemnation and sale, the richest seas of the globe, though bordered and thickly studded with the most flourishing colonies of our enemies, have no safe booty to yield to the seamen of the British navy. It is painful to reflect, that these brave men lose the ancient fruits of distant service, while enduring more than its ordinary hardships. In the West Indies, particularly, they suffer far more by the ravages of disease, than when the Spanish galleons, and the convoys from the French Antilles, consoled them and rallied their spirits. Then too, victory, either

* The merchantmen taken by Lord St. Vincent and Sir Charles Grey, at Martinique and Guadaloupe, were all of this description, and, with their cargoes, were ultimately restored.

in possession or prospect, often enlivened that languid service, and reanimated the sickly crews; but now, they meet no enemy worthy of their valour. Their only, but most disheartening foes, are the fever and the neutral flag.

If we look nearer home, the reverse, in the situation of our seamen, is not less singular or discouraging. The Mediterranean, the Bay of Biscay, the Channel, the German Ocean, are covered with the exports of Spain, Holland, and France, and their colonies, and with shipping bound to their ports; but where are the prizes of war? Our cruizers search for them in vain, even on the hostile coasts;—for even there, vessels, impudently called neutral, conduct, for the most part, that domestic intercourse between different parts of the same hostile kingdom, which is called the coasting trade.

The examination of our disguised enemies at sea is become every where, in general, a fruitless task; since they are grown far too expert to be detected, by such a scrutiny as can be made by a visiting officer on shipboard. Yet, if they are sent into port, it is at the captor's peril. Should a commanding officer, relying on the notoriety of some fraudulent practice, or on private information, venture to take that course, he and his shipmates well know the difficulties they will have to encounter in obtaining a condemna-

tion; and that after a tedious contest in the original and appellate jurisdiction, they are likely at last to sit down with the loss of their expences and costs.

The consequence naturally is, that but a very few of those pseudoneutrals, which are met with and examined at sea, are brought in for judicial enquiry; and that a still smaller proportion of them, are prosecuted as prize; though the law officers of the crown in the Admiralty, in a great majority of the cases which they examine, have scarcely a doubt that the property is hostile. They know by experience the fraudulent nature of the papers; but they know also the artful and elaborate perjury by which those papers will be supported, and which, however unsatisfactory out of court, it will be impossible judicially to resist.—Even when discoveries are made, such as will clearly justify a prosecution, the practice of letting in explanatory affidavits on the part of claimants, for the most part secures an ultimate acquittal, and frustrates the hopes of the captors.

At the best, as every bottom, and every bale of goods, is now infallibly claimed by the neutralizing agents, and every claim, however clear the detection of its falshood may be, is pertinaciously prosecuted, the rare event of a final condemnation can only be obtained through the me-

dium of a long contest at law—an evil peculiarly unpleasant to the sanguine mind of a sailor. It may be safely affirmed, that one prize taken, as in former wars, under the colours of an enemy, and therefore promptly condemned and distributed without litigation, would do more towards the encouragement of our navy, than five prizes of equal value, tardily, and with difficulty secured, as at present, by the detection of neutral impostures.

Almost the only class of captures, on which our seamen can now with any safety rely, are those which are founded on the breach of a blockade. Even those, however, are rarely adjudged without an obstinate litigation in the Admiralty, if not also in the superior court. But the ordinary value of such prizes is small; and, on the whole, they are so far from making any amends to our navy at large for the loss of its legitimate prey in the colonial trade, that they are a very inadequate recompence to the squadrons employed in the blockades, for the extraordinary severity of that service. Here also, a war, barren of gain, is peculiarly productive of hardships, and privations, to our gallant defenders.

These discouragements have been very patiently borne: our loyal and generous tars well know the difficulties of their country, and are content to defend it under every disadvantage

that the exigencies of the times may impose on them. But if the present commerce with the hostile colonies be plainly such as we have a right to interdict, and if the great national considerations before suggested concur in calling for its prohibition, the interests of our gallant officers and seamen may most reasonably fortify the call. —They ought not, without a clear obligation of national duty, or a plain and strong preponderance of public good, to be shut out from their ancient advantages, to be jostled by every neutral in the chase of their lawful game, and to sit down in poverty at the next peace, after sustaining, during two long wars, the dominion of the sea, against three of the wealthiest of commercial nations.

Far different is the case with the navy of our enemies.

The field of capture to them is entirely open, and as fertile as British commerce can make it. Whatever enterprise or courage they display, has the promise of a brilliant reward; and even when flying from the name of Nelson, with nearly double his force, they could stumble on and seize a rich West India convoy in their way.— Unless their cowardly haste really led them to destroy the booty, they may boast, perhaps, of commercial spoils more valuable than the hero,

who intrepidly pursued them, has met with in both his wars*.

If France persists in her new system, if she does not again quite abandon the sea to us, this strange and most unnatural contrast will have serious effects. Our navy will still be loyal and active, but the difficulty of adding to its force will be formidably increased; while the enemy, when he begins in earnest to assail our commerce, will be powerfully assisted in manning his ships, by the prospect of lucrative captures. The sea abounds with adventurers, who have no settled national character, and these men, in general, will naturally flock to his standard.

Already the injurious influence of this cause in one species of maritime war, is very visible.

From the days of Elizabeth to the present time, much has always been done to the annoyance of our commercial enemies by the enterprize of private subjects. Our own commerce, at the same time, has derived no inconsiderable, though an accidental protection, from the same source; since the hostile cruizers have been kept

* Alas! on the very day when these sheets first met the eye of the public, that illustrious character ceased to have any interest in their subject; but the circumstances in which he is known to have died, strikingly confirm these reflections.

in check, or taken, and our merchantmen, when captured, often rescued from the enemy, by our private ships of war.

But the unparalleled licence of the neutral flag, has so discouraged privateering, that the practice of it is nearly extinguished. It may be safely affirmed, that in any war with Spain, prior to the last, one of our vice-admiralty courts alone, could have produced a longer list of commissions, taken out, not for armed merchantmen, but for efficient privateers, than all those judicatures, and the High Court of Admiralty together, can now collectively furnish. The decline of this cheap and useful, though inferior, species of marine, is so natural an effect of the great surrender which has been made of our belligerent rights, that the only ground of surprise is, to find a single cruizer still in commission. Few though they now are, and very inconsiderable in force, their owners can only be influenced by that excessive spirit of adventure, which will sometimes prompt men to play the most disadvantageous and ruinous game.

The enemy, on the other hand, abounds, as has been already noticed, in this irregular species of force.

In no former war, perhaps, were so many privateers fitted out from the colonies of France and Spain as now; and their number is daily in-

creasing; for, not only the mariners of those colonies, but all the freebooters in their neighbourhood, are easily induced to man them. They are, in general, very small; but the fitter on that account, in the West India seas, and in the narrow channels of the Antilles, to escape from the pursuit of our frigates; nor are they the less able to seize on our merchantmen; who, having now nothing better than an escape, to expect from the expence of carrying guns, and a letter of marque, are generally quite defenceless. The navigation of those seas was, perhaps, never so dangerous to British merchantmen sailing without convoy, as at present; and even our packets, are sometimes taken by French privateers, on their passage from island to island.

The catalogue of evils produced by the same mischievous cause, might be still further enlarged.

I might shew in it a powerful inducement to that selfish neutrality, by which one, at least, of the continental states, has enhanced the common danger of Europe. The vain glory, and the popularity, attendant on a vast, though visionary, enlargement of commerce, may naturally have charms for a monarch not ambitious of more solid renown.

I might also notice the great discouragement given to various important branches of our own

exterior commerce; and, above all, might insist on the permanent detriment likely to be sustained by our commercial marine. The forced artificial growth of neutral shipping, both supposititious and real, will, no doubt, shrink back again, in great measure, at a peace; but will not be entirely lost. In America, especially, the vast excrescence is daily absorbed into, and enlarges the natural body, which, in various quarters, is peculiarly likely to displace, by its extended dimensions, the maritime interests of England.

Where is the political providence, which dictated that wise measure, the Register Act of Lord Liverpool? He justly called the navigation act, "a noble strain of commercial policy, "and one which alone had fortunately outweighed all our national follies and extravagancies*." Though no indiscriminate admirer of his lordship's commercial principles, I do him the justice to say, that the act known by his name, was an essential and well-timed support to the great law he justly celebrates; and the best preventative that human ingenuity could have devised, of that decay, with which our navigation was threatened by the independency of America.

* Discourse on the Conduct of the Government of Great Britain, in respect to Neutral Nations.

But vain was this and every other effort to guard our maritime interests by law, if, by a surrender of our belligerent rights, the carrying trade of the globe is to be thrown into the hands of our rivals; and a hot-bed made for the navigation of America, at the cost of the British navy.

In the contemplation, however, of those nearer and more fatal consequences, the utter frustration of our hostilities against the commerce and revenue of France, and the danger of losing our superiority at sea, during this momentous contest, all minor and distant evils lose their terrors. I will, therefore, search no further into the extent of this baneful and prolific mischief.

---

2. *Of the Remedy for these Evils, and the Right of applying it.*

For that grand evil, which it is my main object to consider, and which is one great source of all the rest, the remedy is sufficiently obvious.

If neutrals have no right, but through our own gratuitous concession, to carry on the colonial trade of our enemies, we may, after a reasonable

notice, withdraw that ruinous indulgence; and, meantime, hold those who claim the benefit of it, to a strict compliance with its terms. If, after the revocation of the licence, the commerce shall be still continued, we may justifiably punish the violators of our belligerent rights, by the seizure and confiscation of such ships as shall be found engaged in the offence, together with their cargoes.

That this is an allowable course, will not be disputed, by those who admit the trade to be illegal. It is the present mode of proceeding, against such neutrals as are detected in voyages still held to be prohibited; and has, in their case, I believe, ceased to occasion complaint, by the states to which they belong.

This remedy also, cannot fail to be effectual. There will be no room for fictitious pretences, when the immediate voyage itself, in respect to the place of departure, or destination, is a sufficient cause of forfeiture; for the illegal fact must be known to every man on board, must appear from the papers, unless all the public, as well as private instruments are fictitious; and besides, would, for the most part, be discoverable, not only from the place of capture, and the course the ship is steering, but from the nature of the cargo on board.

The use, therefore, of neutral bottoms, in the

colonial trade, would soon be found by our enemies, to yield them no protection. They would hoist again their own commercial colours; and either restore to us all the fair fruits of an unresisted naval superiority, or, by sending out convoys for the protection of their trade, open to us again that ancient field of offensive war, in which we are sure to be victorious. Our seamen would be enriched, our imports would be very largely increased, and every western breeze would waft into the channel, not a neutral sail or two, to furnish diplomatic squabbles, and litigation in the admiralty; but numerous and valuable prizes, and sometimes entire fleets of merchantmen, with their convoys, taken from open enemies, and under hostile colours. The captive flags of France, Holland, and Spain, would again be incessantly seen at Plymouth and Spithead, drooping below the British ensigns; and the spectacle would recruit for our navy, far better than the most liberal bounties.

Then too, the enemy would be often obliged, to hazard his squadrons and fleets, for the relief of his colonies, as was usual in former wars; and the known partiality of Buonaparte to these possessions, especially to the Windward Antilles, would, perhaps induce him to incur risques for

their protection, greater than those which their value in a national view, might warrant *.

* Here dwell the native and nearest connections of his august consort; and at Martinique, her imperial highness the empress mother, *ci devant* Madame Lapagerie, has a court, and all the other splendid appendages of royalty, to the great local exaltation of that illustrious house.

At Guadaloupe too, it is said, the emperor owns, in right of his consort, a flourishing plantation, the only dowry she has brought to the throne of the Bourbons; except a gang of negroes, improved in number, no doubt, since the restitution of the slave trade. Their fate has been directly the reverse of that of the Roman slaves; who were always enfranchised on the elevation of their lord to the purple; but though they do not

"Pursue the triumph, and partake the gale,"

they are cherished, with the rest of the patrimony in the Antilles; perhaps, with the providence of the visier Alibeg, when he preserved his shepherd's pipe and crook; and may they be an equal consolation on a descent from imperial fortunes. For my part, I see not why Buonaparte should not be as happy on his wife's estate at Guadaloupe, as Dionysius in his school at Athens.

I would ask the reader's pardon for detaining him with such trifles, if it were not for the secret connection they may have with the affairs of nations. I offer it as a serious opinion, that the court, the revenues, and feelings of the Lapageries, give to Martinique and Guadaloupe, at present, much adventitious importance; and I will even hazard a conjecture, that they had some share in producing the only great maritime enterprize of the war, the strange expedition to the Windward Islands. Martinique was strongly reinforced, the Diamond Rock was retaken, troops and arms were landed at

At least, the real importance of these, and the other hostile colonies, would compel the enemy to expose his marine frequently in their defence, when the rampart of neutral navigation no longer protected them from urgent distress and ruin. We should therefore, by the measure I have proposed, not only remedy most of the great and complicated evils which have been noticed, but restore to our navy, the chance of frequently finding a hostile fleet, to combat and to conquer.

In a word, by restoring the colonial trade of our enemies to its proper shape, and its native channels, we should recover very much, though by no means all, of those natural advantages in the war, which a belligerent, so decidedly superior at sea, ought justly to enjoy; but which are at present most strangely reversed.

Guadaloupe, and the combined fleets returned. Such were the effects of an enterprise, in which so much was hazarded; and Europe has been at a loss to discover unaccomplished objects, less disproportionate to the means employed. Perhaps, if we knew the force of local predilections in the breast of the empress, and the influence of this Juno and her friends in the councils of the French Olympus, the wanderings of the Toulon, like those of the Trojan, fleet, would, if not quite explained, be rendered less mysterious.

But is this a case in which we have a right to any remedy at all? In other words, is not the engaging in the colonial trade of our enemies lawful to neutral merchants, independently of the permission given by the royal instructions; and are not the evils which have been shewn to arise from the practice such as we are bound to submit to, as flowing from the exercise of a right which we cannot justly restrain? In short, is not this mischief, in the language of lawyers, "*damnum absque injuria?*"

This, if attended with doubt, would be indeed a most important question. If it cannot be satisfactorily answered on the part of our country, there should be an end to every thought of resistance, if not also to complaint. In that case, let the noble conduct of the Athenian people, on a well known occasion, be a pattern for our own. Nothing can be more advantageous for us, than the suppression of this commerce; but if, like the advice censured by Aristides, it requires a breach of justice, let us inflexibly abstain.

Would to God (for that sacred name may be allowably invoked in behalf of the virtue he loves) would to God, I say, that nations always prized the obligations of moral duty, far beyond every specious advantage, however great, that opposed them; however seemingly essential even to the

care of self-preservation. The sacrifice, though noble in design, would in its effect, not be costly; for never in the affairs of nations, was solid security, or true prosperity, purchased at the cost of virtuous principle. The page of history, if carefully read for the purpose, would establish this important truth, and teach us to deride those shallow statesmen, who dream to the contrary; though, like Caiaphas, a great master of their school, they are vain of their pernicious counsels, and say disdainfully to others, "Ye know nothing at all."

But in this case, moral right and visible expediency, will be found entirely to harmonise.

The neutral powers, it should first be observed, have all assented to the rule of the war 1756, in point of principle, by submitting to its partial application.

Their ships, when taken in a direct voyage to or from the hostile countries and their colonies, or in a trade between the latter and any other neutral country than their own, have been always condemned by our prize courts, both in the last and the present war: and the practice, during many years, has ceased to occasion complaint. Yet these restrictions can be warranted by no other principle, than that on which they were expressly founded, "the unlawfulness of trading with the colonies of a belligerent in

time of war, in a way not permitted in time of peace."

On what other principle than this, could Great Britain be allowed to say to a Dane or an American, the owner of produce bought in a hostile colony, and passing on the high seas under his own flag, in the one case, "You shall not "carry it to America;" in the other, "You "shall not carry it to Europe?" The right can plainly stand on no other foundation than this, that Great Britain might lawfully have prohibited the taking the cargo on board at the place of shipment, on any destination whatever, and, consequently, in waving the general prohibition, she had a right to prescribe to what places it should be carried.

If I should dictate to a neighbour, that in crossing a certain field which lay between our respective tenements, he and his servants should confine themselves to a certain path which I had marked out for the purpose, and if he should for years comply with the restriction, or submit to be treated as a trespasser whenever he deviated from it; I might, consistently enough, if I found the passage a nuisance, shut it up altogether: but it would be grossly inconsistent in him, thereupon to deny my right to the field, and pretend that it was common land.

Should it, however, be thought that the tacit

admission of the principle, ought not to preclude the neutral powers from disputing, though inconsistently in point of theory, a practical application of it, more extensive than that in which they have so long acquiesced, it must at least be admitted, that in reverting to the rule of the war 1756, Great Britain would have to assert no new claim of right; and would be only bound to assign a fair reason for withdrawing a voluntary modification of its use.

Now, in the first place, we may truly allege as a reason for withdrawing the indulgence, that it has been very grossly abused: and in the next place, what is enough to create a right, and much more to defend the strict use of a right already existing, that self-preservation demands from us the revocation of the licence we gave.

It would be a most extraordinary and unprecedented situation for two friendly powers to stand in, if the one had a right to do any thing which is destructive to the other. Yet, since the trade in question has been shewn to be ruinous to our hopes in the war, and may eventually give a superiority at sea, to an enemy already enormously superior to us in land forces, and bent on our destruction, either the neutral powers and Great Britain stand in that strange predicament in relation to each other, or we have a right to restrain this trade. If we have no such right, then those

states with whom we are in perfect friendship, have a right to persevere in a conduct, which may, in its natural consequences, make England a province of France.

If such be the offices of peace and amity, how differ they from those of war? The harsh rights of war may, indeed, be exercised in a different manner; but their extreme extent, is to inflict on an enemy all the mischiefs that may be necessary to his subjugation; and I do not see how these powers, if confederates of France, could contribute more effectual means to that end, than those they at present employ.

Waving then, for a moment, the objections that arise to this commerce, in respect of its origin and objects, and supposing both to be unexceptionably lawful; still, if its further prosecution be inconsistent with our safety, the obligations of peace and amity, call on the neutral powers to abstain from it. When conflicting rights arise between nations, one party must give way, or war must be the issue; a right, therefore, which is essential to the existence of the possessor, ought to prevail over one which is not of such vital importance. Now, the neutral powers can subsist without this newly-acquired commerce; but Great Britain cannot long exist as a nation, if bereft of her ancient means of offensive maritime war.

That we are engaged in a contest, an adverse issue of which may be fatal to our national safety and independence, will hardly be denied; if then a necessary mean of preventing such an issue, be the cutting off of the colonial resources of our enemies, to dispute our right of doing so, is, in effect, to dispute the right of self defence.

It is by no means necessary, however, to resort to this primary law of nature and nations; for in truth there are, in the case before us, no conflicting rights. Should we even consent to wave the ground of precedent and acquiescence, and examine in the fullest manner the original merits of this question, there will be found clear belligerent right, on the one side, and nothing but palpable encroachment on the other.

The true principles on which the rule of the war 1756 was founded, have been already stated and inforced, in a manner which it would be easy to amplify, but difficult to improve*.

I will not hazard such an attempt; but rather content myself with considering briefly, the most specious objections that have been offered on the other side.

To the vague general invectives of the French government on this subject, no serious reply can be due. Buonaparte declaims on the maritime

* See supra, p. 13 to 16.

despotism of England, with the same good grace, with which he imputed assassinating principles to the Duc D'Enghien, perfidy to Toussaint, and ambition to the House of Austria. It is his peculiar stile, in all cases, not merely to defame his enemies, but to impute to them the very crimes, which he is himself, at the same moment, perpetrating; and of which they are the intended victims. He is quite in character, therefore, when he accuses us of trampling on the maritime rights of other nations, while he, by the aid of those very nations, is subverting our own.

He calls us the "tyrants of the sea;" but if the throne is ours, he has filched away the sceptre; and our naval diadem, like his own iron crown of Lombardy, is, in a commercial view, cumbersome and worthless. This empire is not like his own; for the imperial family are less favoured in it than their enemies. We traverse the ocean at a greater charge, even for security on the passage, than those who have no share in the domain.

The usurper's favourite topic, of late, has been the liberty of navigation: he would be thought the champion of the common rights of all maritime states. What! has he forgot, or does he expect Europe or America to forget, the recent conduct of France? Nothing, it is obvious, but his own crafty policy, prevents his recurring, at

this moment, to the full extent of that extravagant pretension on which the neutral powers were so shamefully plundered during the last war; and for a release of which his minister, M. Talleyrand, demanded "*beaucoup d'argent*" from America—I mean the monstrous pretension of a right to confiscate every neutral ship and cargo, in which one bale of English merchandize was found.

Yes! he will clamour for the freedom of the seas, as he did for the freedom of France, till his neutralizing friends shall have placed him in a condition to destroy it. But should his marine be ever restored by their means, they will feel, as Frenchmen have done, the heavy yoke of a jealous new-erected despotism, instead of those mild and ancient laws, which they were foolishly persuaded to reject.

The only liberty which this impostor will for a moment patronize or tolerate, either at sea or on shore, is that liberty which consists solely in the absence of order, and in the power of invading with impunity the long-established rights of others. It is a jacobin liberty only which he would give to navigation, till his own iron bonds for it are forged.

I decline also engaging with those objectors, who, without copying the invectives of Buonaparte, dispute, like him, our right to suppress

the commerce in question, on principles that impeach the practice of maritime capture at large*.

Those who have sublimated their imaginations so far, as really to think that war ought, in justice and mercy, to be banished from the boisterous ocean, that it may prey the more and the longer, on the social cities, or quiet plains; are not likely to descend with me into the regions of sober investigation.

To those idolaters of the neutral flag also, who hold a yard of bunting on the poop of a merchantman, more sacred than the veil of a vestal, I have nothing to offer. If this inviolable emblem, ought absolutely to arrest the arms of contending nations, and preserve, in all cases, the contents of its sanctuary from capture, it may with equal reason, I admit, receive under its safeguard, the colonial commerce, as the general property, of a belligerent.

But there are some champions of neutral pretensions, who, without openly contending for these extravagant doctrines, maintain stoutly that neutral merchants have a right to trade on their own account, with the powers at war,

* If the reader wishes to be informed of the full extent of these revolutionary doctrines, he may find them compendiously stated, and ably and learnedly refuted, in Mr. Ward's Treatise on the Rights and Duties of Belligerent and Neutral Powers.

wherever, and in whatsoever commodities, they please. If contraband goods, and blockaded places be graciously excepted, this is the utmost extent of their abstinence. All other neutral commerce, they hold to be unquestionably legal.

Such persons naturally enough quarrel with the rule of the war 1756, and they attempt to encounter the powerful arguments which I have quoted on its behalf, by objecting,

First—" That neutral nations always suffer in " their ordinary trade through the wars of those " maritime friends with whom they have any " commercial relations; and therefore may be " reasonably allowed to acquire some com- " pensatory advantages on the other hand, by " the opening of new branches of commerce."

If neutrals were really losers by the wars of their neighbours, it would, perhaps, be fortunate for mankind; but would give them no right to indemnify themselves, by accepting, in the form of commerce, a bribe from the weaker party, to protect him from the arms of the stronger. But in the last and present war, at least, this pretence has no shadow of foundation. Let the neutral powers confess that their late vast apparent increase of commerce, is fictitious, and that the frauds also are gratuitous; or let them admit that independently of the trade in question, they have enormously profited by wars, which to their

friends have been highly disastrous. There is no escaping from this dilemma; for they possessed not the colonial trade in time of peace, and now they ostensibly possess that and every other branch of commerce which our enemies formerly enjoyed.

The neutral, however, has many fair indemnities, without any trespass on belligerent rights.—The comparative cheapness of his navigation, gives him in every open market a decisive advantage. In the commerce of other neutral countries, he cannot fail to supplant the belligerents; and the latter will naturally give him the carriage of such of his own commodities, as he before usually supplied them with, partly or wholly through their own navigation. What they used formerly, to buy in his ports, they will now be content to purchase from him, at an advanced price, in their own.

He obtains also a still larger increase of commerce, by purchasing from the one belligerent, and selling to his enemy, the merchandize for which in time of peace, they mutually depended on each other. The decay of his old branches of trade, therefore, if any such decay arises from the war, is on the whole amply compensated.

It has further been objected, "that allowing "the acquisition of this trade to be a gratuitous "benefit to neutrals, arising out of the war, they

"obtain it by the gift of an independent nation, "to which at the moment of that gift it still be- "longed, and therefore may lawfully accept the "boon, without leave of the adverse belligerent. "France, it is said, still retains possession of her "colonies; and, therefore has a clear legislative "right to regulate their commerce: Great Bri- "tain is not even attempting the reduction of "those hostile territories; nor are our ships "now blockading their ports; to profit, there- "fore, by the change in their commercial laws, "by trading with them when invited to do so, "is not a violation of neutrality."

This argument is plainly evasive. It is not the right of a belligerent, to impart a benefit of this kind, but the right of a neutral, to accept it, that is the point in controversy.

The carrying of contraband to the enemy, or of provisions to a besieged place, might be defended in the same way; for the belligerent has an undoubted right to buy those articles if carried to him, or to contract previously for their transmission by the neutral. But the belligerent has one set of obligations, and his neutral friend has another, of a very different kind; it is fallacious, therefore, to reason from the rights of the one, to the rights or duties of the other.

If the legality of any branch of commerce, as between the enemy and a neutral, could entitle it

to protection from our hostilities, its illegality, *e converso*, might reasonably subject it to capture and condemnation. But neutral merchants know to their great advantage, that the latter is not the doctrine of the British prize court. Property to an immense value was restored during the last war, which was avowedly the subject of a commerce with Spanish territories, contraband at the time of the transaction, by the law of Spain. If our belligerent rights cannot be enlarged by any regard to the commercial law of the enemy, considered merely as such, neither can they be abridged by it.

Did the transfer in question create no prejudice to the adverse belligerent, its lawfulness could not be disputed; but if, on the other hand, its direct tendency is to enable our enemy to elude our lawful hostilities, and to deliver him from the pressure of a maritime war; and if these were manifestly his only objects in the measure; to allege the right, or power of the enemy, to change his system, in justification of his neutral accomplice, is to offer in defence of a wrongful act, no more than that there was an opportunity given for its perpetration.

It is quite immaterial, whether we are attempting to conquer the hostile colonies, or what is more doubtful perhaps, whether we might not successfully have made such attempts,

if not prevented by the effects of the very measure in question; for the commerce, not the sovereignty of the colonies, is that object of hostile interest, which is wrongfully protected against us. The apologist, therefore, should go on to allege, if he can, that the colonial navigation and commerce, as well as the territory, were perfectly safe from our arms.

If France should cede to the United States, the island of Martinique, or Spain the province of Mexico, it might perhaps be a material defence for their accepting the grant, though adverse to our interests in the war, that the enemy remained in possession when he made it; and that the colony was not besieged or invaded; but since the cession now complained of, is not of the territory, but of its maritime trade, the foundation of the argument fails; for the enemy is not in possession, much less in an uncontested possession, of the commerce, which he affects to surrender. He still holds, indeed, the key of his colonial ports; but the way to them, is occupied by an enemy, whom he can neither resist nor escape. It is not the mere right of landing and taking on board of goods, in the harbour of St. Pierre, or Vera Cruz, but the right of carriage from the colony to the transmarine market, that is the subject of the grant to the neutral; and of this important franchise, the enemy

found himself incapable to defend the possession, before he relinquished the right.

The geographical way itself, indeed, is common to all nations: and we are perpetually told, that the sea is open and free. But a right of carriage may be restrained, in respect of the articles that are carried, and the places to or from which they pass, as well as in respect of the path-way itself.

The road from London to York, is open and common to all his Majesty's subjects; but not for the carriage of a mail-bag, to or from any part of the realm, for the profit of private persons. The right of such carriage, notwithstanding the general freedom of the York road, belongs exclusively to the Post-office; and so did the carriage of colonial produce or supplies, to the parent state, notwithstanding the general freedom of the sea. In this respect, the passage was not open in time of peace; to allege the common right of navigating the ocean, therefore, in defence of the insidious assignment of the right of carriage, is not less preposterous, than if the freedom of the post-roads, should be offered as an excuse for the unlawful acquisition or transfer of a post-office contract.

To give the argument we are considering, all possible scope, let it be supposed that the enemy was in full immediate possession, not only of his

colonies, but of his ordinary commerce with them, at the time of relaxing his monopoly. This, is certainly to concede much more than is due; since he durst not, at the time, send a ship, under his own colours, to or from the colonial ports; and therefore, the possession of the commercial franchise, by its actual exercise, the only mode of possession of which it is susceptible, was suspended. But supposing the reverse; still this great branch of commerce became a known subject of belligerent contest, on the commencement of a maritime war; for it would be trifling to go about to prove, that Great Britain must always look to the colonial trade of France and Spain, as the first object of her hostilities. When we drew the sword, it was notice to every neutral power, that this commerce was no longer an uncontested possession of our enemies; but rather a prize set up within the lists of war, the seizure or defence of which would be a principal aim of the combatants. If so, how can the assisting our enemies to withdraw the rich stake from the field, be reconciled with the duties of neutrality?

Let it be supposed, that a large fleet of French and Spanish merchantmen, with their owners on board, were passing the sea under convoy; and that receiving information on their way, of the

position of a British squadron sent out to take them, by which they must infallibly be intercepted in a few hours, they should avail themselves of an opportunity to sell the ships and cargoes to some neutral merchants, whom they met with at the moment at sea; it will hardly be thought that such a transfer would be valid against the British captors, if the squadron should afterwards fall in with and capture the fleet.

Yet what principle of natural justice makes it otherwise, that does not equally apply to the case of the colonial trade? The purchase of ships and cargoes at sea, is not a wider departure from the ordinary course of commerce, than trading in sugar and coffee under foreign flags, in the West Indies; the right of the owner to sell, in the one instance, might be alleged as plausibly as the right of the hostile state to open its ports, in the other; and the motive is in both cases the same.

But when we advert to the principles, on which the trade in question is defended, this illustration is far too weak, to shew their injustice. There is not one of them, that would not serve to justify the sale of the merchantmen in the supposed case to the neutral, if made after the British squadron had come up, and when it was on the point of taking the convoy.

The justice of municipal law, may furnish us here with some fair analogies.

Is property of any kind, when the specific subject of litigation, aliened by the party in possession, pending a suit for its recovery, and to a person who has notice of that suit; the acceptance of it, is a wrong to the adverse party; and he may assert against the grantee, though a purchaser at an adequate price, the same specific rights which he had against his first opponent. With equal reason, Great Britain may exercise against this commerce, though assigned to neutrals, the right of maritime capture.

Should it be objected, that there is no specific title vested in the adverse belligerent, but only a general right of seizure; I answer, that this distinction, though often allowed in favour of commercial convenience, is not held by municipal law to affect the equity of the rule, when the intent of the transaction is, to defeat such general rights; as might be shewn by reference to the bankrupt laws, and other parts of our code.

In the case, for instance, of goods removed by a tenant from his leasehold premises, to avoid a distress for rent, and sold for that purpose to a third person privy to the fraud, the landlord may follow, and seize them within a limited time,

even in the hands of the purchaser. The latter also, if an accomplice in the contrivance, is regarded as a criminal, and punished by a forfeiture of double the value of the goods.

In this, I apprehend, as in the former case, the rule of American law is conformable to that of England; but should the natural equity of it appear at all doubtful, let the following further circumstances, be added to the illegal transaction. Let it be supposed, that the tenant, in consequence of previous distresses, or from other causes, has no means of sending his own corn or hay to market, by his own waggons, as formerly, so as to avoid a seizure by the landlord; and therefore, contrary to all ordinary usage, and to the necessary œconomy of his business, offers to sell them in the stack to his neighbours, at a low price, to be conveyed by them, on their own account, in their own vehicles, from the premises. Should they, knowing his necessities, and his dishonest views, take the proffered advantage, and send their own carts and waggons into his farm-yard for the purpose; surely the justice of the rule of law would, in such a case, be readily admitted. The application is sufficiently obvious.

It has been further objected to the rule of the war 1756, "that neutrals are allowed, without "opposition, in other cases, to avail themselves

"of various alterations in the laws of the belligerent states, to which the policy of war has given birth, and by virtue of which they are admitted into several branches of trade, with the metropolitan country itself, which were not open before, as well as encouraged to engage more extensively in others, by greater privilege and favour than the pacific system allowed In some cases, therefore, it is argued, we ourselves admit, that it is lawful to trade with an enemy in time of war, in a way not permitted in time of peace; and should we now assert a contrary principle, many well-established branches of neutral commerce in the European seas, and even with Great Britain herself, might be on the same ground abolished."

This is an argument of the same family with those modern political sophisms, by which nations have been convulsed, and kingdoms overthrown.

To confound practical moderation, with theological inconsistency, to reject all principles that cannot be followed into their extreme consequences, and to justify one excess by the inconveniences of another, are effectual weapons for the assault of every legal or political system, and for the defence of every innovation.

I admit that partial changes in the commercial

laws of a belligerent state, are occasionally made in favour of neutral commerce; and that when such changes are calculated to produce an effect on the war, advantageous to the party who makes them, and detrimental to his opponent, they fall in strictness within the principle of the rule of the war 1756, though the commerce of the mother country only, not of the colonies, should be their subject.

But of what nature have been these alterations? Not an unqualified admission, as in the colonial case, of neutral ships, into ports where no foreign prow could enter for any commercial end before; not an entire surrender of a national privilege, or monopoly, which, in time of peace, was always jealously maintained; much less, an invocation of neutrals, wholly to conduct a commerce essential to the existence of one part of the empire, and which must, otherwise, be totally lost; but for the most part, only a reduction or remission of duties; and at the utmost, a permission to import or export specific articles, to or from some foreign country, in a manner not allowed before.

I except, of course, that indiscriminate admission into every branch of the commerce of our enemies, including even their coasting trade, which has now taken place. The comprehensive enormity of the existing wrong itself, will hardly

be objected, in defence of its most exceptionable branch; besides, as to the coasting trade, the employment of neutral vessels in it, is treated by our prize tribunals as illegal, though the extreme penalty of confiscation, has not yet been applied*. Perhaps his Majesty's government, finding the more lenient sanctions of a forfeiture of freight, and expences, and such further discouragements as have been hitherto applied, to be wholly ineffectual, ought to consider this as a branch of illicit trade, to which the forfeiture of ship and cargo should in future be annexed, and to issue an instruction for that purpose †.

In all other, and ordinary innovations of this kind, the change has rather been in the enlargement of an existing intercourse, than the opening of one which had been quite interdicted

* Case of the Emanuel, Soderstrom, 4 Robinson 296.

† The fact of hostile property in this trade, as in the rest, is covered by such abundant and accurate perjury, that unless a judge were at liberty to act on the firm persuasion of his mind, arising from general presumptions, against the fullest positive testimony, the cargoes can rarely be condemned; and consequently forfeiture of freight, is a penalty that can rarely be applied. The other discouragements here alluded to, are the privation of such indulgences, in respect of the admission of further evidence, in cases of doubt, as claimants of property taken in a fair and lawful trade are entitled to.

before. But the change in the colonial commerce, has amounted, in respect of the flag and the voyage, to an entire revolution. Except in certain privileged ports, and in some special cases, the entry of a foreign vessel into a colonial port, for any mercantile purpose, is a kind of commercial adultery, to which, till the divorce occasioned by war, no colonizing power submitted (O).

This distinction is important, in regard not only to the nature and extent of the wrong, but to the convenience of the remedy.

The redress which the injured belligerent obtains, by the seizure of the offending vessels, is naturally offensive in its mode, and liable to abuse in its application. The right of capture, therefore, ought not to be exercised against neutrals, but in cases which admit of being broadly and clearly defined; for it is better to submit to many palpable encroachments on the confines of our belligerent rights, than to guard them with a strictness which may be inconvenient to our peaceable neighbours. If it were resolved to apply the rule of the war 1756, to all the branches and modes of European commerce with our enemies, to which neutrals have been admitted during the war, and in consequence of the war, it would be a line of conduct, difficult

(O) See Appendix, 163.

to draw with precision, even in the cabinet; nor, however carefully delineated by specific instructions to our cruizers, would its practical application be easy. It would also give birth to endless distinctions in judgment, and to an infinity of petty and intricate disputes with neutral nations: for let it be remembered, that not the novelty of the trade only, but the motive of its permission by the enemy, is essential to the rule in question.

And here let me point out by the way, a new reason for not allowing the particular manner and intent of an importation into a neutral country, to determine the right of re-exporting the same goods to a foreign market, or its liability to seizure on the way. If a trade between the hostile countries and their colonies is to be legalised by nice distinctions, the fact of which a visiting officer can never with certainty discover, it would be better at once to give up the whole of that important rule for which I contend, and allow the trade to be conducted in a direct and single voyage.

The colonial trade, however, is further distinguishable from those other branches of commerce, which have been the subjects of a like belligerent policy, in some very essential features.

It differs from them, not only in the peculiar strictness, and broad generical character, of the

monopoly by the parent state during peace, which is fraudulently suspended in war; but in the nature of those interests which it involves, and in the principles on which it is, in its natural course, conducted.

Strictly speaking, it is not commerce; though, in conformity to common usage, and for want of an appropriate term, I have hitherto given it that appellation; and I cannot help thinking, that the difficulty (if to any impartial mind there really appears any difficulty at all, attendant on this plain question) would never have been imagined, if the anomalous intercourse between a mother country and its colony, had not been confounded in idea, through the use of a vague general name, with ordinary commerce or trade.

Commerce, in its proper signification, implies both buying and selling; and in a commercial voyage, goods are usually either transmitted from the seller in one country, to the buyer in another; or sent on the buyer's account, for sale in a different market.

But what is the general object of shipments in time of peace, from Europe to a West-India island? To send for sale, merchandise which has been purchased or ordered, on account either of the shipper or consignee? No such thing— If we except small quantities of provisions, cloth-

ing, and other necessaries, destined for the supply of the few white inhabitants, which are bought in Europe by the agents of the West India store-keepers, and sent to them on their account, to be retailed in their stores or shops; the outward cargoes are all shipped by planters, or the agents of planters, and consigned to them, their attornies, or managers, for the use of their estates.

Again, on the return voyages, are the cargoes composed of goods, the subjects of mercantile enterprise, which have been shipped by merchants in the colony on their own account, or on account of merchants in Europe, by whom they have been ordered? By no means—they consist almost universally, of the produce of the plantations, sent by the planters to their own agents in the mother country; or which is much more common, to the planter himself in that country, by his own manager in the colony.

Am I asked how such transactions differ from commerce? I answer—In the same degree, that a man sending his own wine, from his cellar in London to his house in the country, differs from commerce; and in the same degree that a gentleman farmer, who sends his own corn to his factor in the market town, differs from a merchant.

In these cases, indeed, inland carriage is used, and in the former, a passage by sea, which, from

habitual association of ideas, seems to us to give a mercantile character to the transaction; but let us divest ourselves for a moment of this prejudice, and that transmission of goods across the Atlantic by the owners, which we call the colonial trade, will be seen to be, in its general nature, no more commercial, than the carriage of the wine or the corn, in the cases I have mentioned.

The plantation stores, indeed, are purchased by the planter, previous to their shipment; and the produce will be sent to market by the consignee, and sold, after its arrival: but the commercial transaction in the one case, was finished before the commencement of the voyage; in the other, it does not commence, till after the voyage has ended. Till the planter or his agent, sends the produce from the warehouse to the market, it is not in any sense the subject of trade; and even the ultimate sale, on account of the grower of the commodity, cannot strictly be regarded as a mercantile transaction. If it be such, every farmer is a merchant.

These are far from mere verbal distinctions. They go to the root of the pretences, such as they are, by which the neutral intercourse between the enemy and his colonies is defended; for if the subject of acquisition by the neutral, is not of a commercial nature, or was not such

till made so for the purpose of enabling him to acquire it, there is an end of all the arguments or declamations that turn on the variable and assignable nature of commerce in time of peace; and to all the supposed analogies between this commerce, and other new-born branches of neutral navigation. This is not, like the other cases, merely the carrying-on of a trade in foreign bottoms, and on foreign account, which before was carried on in native bottoms, and on native account; but it is the converting into a trade, of that which before was a mere removal of goods, without any transfer of property.

A new character, as well as a new conveyance, is given to the exports and imports of the colonies. The alleged right to protect them, is founded on their being commercial; but they were first made commercial, in order to be protected; and if the neutral merchant really carries them on his own account, he does more than was done by the enemy merchant, before the war. Not only the ancient system of navigation, therefore, but the ancient course of colonial economy, is inverted, for the sake of eluding our hostilities.

But there is another, and perhaps a still stronger ground of distinction, between this and all the other branches of commerce, which neutrals have been allowed to conduct in time of war.

The capital employed in colonial agriculture belongs, for the most part, to the mother country, where the owners or mortgagees reside; and the produce sent to Europe is chiefly the interest or profit of that capital: consequently the mother country has a beneficial interest in the remittance, quite distinct from its commercial use, and which equals, or bears a large proportion to, its entire value. It is not merely a medium or vehicle of commercial gain, or a subject of manufacturing profit; but is, abstractedly from its specific form and use, substantial wealth and revenue. It differs from ordinary commercial imports, as corn-rent paid to a landholder, differs from the purchased corn of the miller or speculator in grain.

Let the effects of this difference, as to the perils of carriage in war, be fairly considered.

In other branches of trade, to destroy the commercial profit of an enemy, or highly aggravate the price of a particular commodity consumed by him, is to make him feel effectually the pressure of the war; and these ends may possibly be accomplished, notwithstanding his resort to the protection of neutral flags.

In respect of goods which he buys to sell again to foreigners, either in the same or a meliorated state, and even in respect of manufactures for foreign markets, of which a native commodity is the

basis, the enhanced price of maritime carriage may be fatal to his hopes of profit. You ruin the trade, when you cut off the gains of the merchant. But his colonial produce is, for the most part, the returns of a transmarine capital already laid out and invested. The importation of it, therefore, cannot cease to be beneficial to him, unless you could raise by your hostilities the price of carriage, till it became equal to the entire gross value of the commodity. Nothing else, except the actual interception of the produce by capture, can make him feel the full effect of the war.

In other cases also, to force him out of his ordinary methods, or established channels of trade, might be to destroy the trade itself. If he could no more import raw silk or cotton, by his own navigation into France, or could no longer buy goods in the Levant or the East Indies, to sell them again in the north of Europe, his factories at Smyrna and Canton might be abandoned. But the case is very different in respect of the returns of his colonial capital. As long as French or Spanish sugar and coffee, can pass from the West Indies, under neutral colours, or even on neutral account, to any market on earth, so long the colonial interests of the planter, and of the state, will be partially, if not wholly, protected from the ruinous effects of war: the value of

the produce will find its way to France and Spain, though the produce itself should be excluded.

I infer, then, from these essential distinctions, that if we were bound to submit to all the other encroachments of the neutral flag, their admission into the ports of the hostile colonies, might still be fairly and consistently resisted.

Perhaps these flimsy defences may not be thought worthy of the time that has been spent in their refutation; and yet I know of none more specious that the apologists of neutral encroachments have offered. In general, a vague and senseless clamour, is their substitute for argument. "Piratical depredations," and "maritime despotism," are phrases which they incessantly repeat; and like the vociferations of "stop thief," by a pickpocket, it is a species of logic, which if it proves not their innocence, at least favours their escape.

After all that has been, or can be said, on this important subject, one plain question will probably be felt to be decisive, by every equitable mind.

Quo Animo?—With what intention, did the enemy open the ports of his colonies to foreign flags?

If it was with commercial views, or for the mere sake of imparting a benefit to friendly

powers, their acceptance of the boon may, perhaps, be justifiable: but if the single, manifest, undissembled, object was, to obtain protection and advantage in the war, to preserve his colonial interests without the risk of defending them, and to shield himself in his most vulnerable part, against the naval hostilities of England; I say, if such was the manifest, and known purpose of the measure, I see not how any dispassionate mind can doubt for a moment, that a co-operation in such an expedient, by powers in amity with England, was a violation of the duties of neutrality.

The motive, indeed, on their part, may not have been hostile; it was the covetous desire, perhaps, only of commercial gain; but if they give effect to a belligerent stratagem of our enemy, whether of an offensive, or defensive kind, knowing it to be such, they become instruments of his insidious purpose, and accomplices in his hostile act. If the commercial motive, can defend them from the charge of inimical conduct, then let the hired assassin, who acts without malice to the victim, be absolved from the guilt of the murder.

Is it then a doubt, I will not say with any statesman, but with any individual merchant, in America, Prussia, or Denmark, that security and

advantage in the war, were the sole objects of this measure with the belligerent governments that adopted it? They themselves have never lent their neutral accomplices so much countenance, as to pretend the contrary. Some of them did not scruple even to recite the obvious truth, in the public instruments, by which their ports were opened.

But the avowal was unnecessary; and could a doubt on this subject have existed during the last war, it would have been precluded in the present, by the intermediate conduct of those powers, after the peace of Amiens. So far was the change of system from being permanent, as was argued, on behalf of the neutral claimants in the last war, that orders were sent to reverse it, the moment the sword was sheathed. Even those foreigners, who had a right to remove their property from the hostile colonies, within a limited time, by virtue of the treaty of Amiens, could not obtain liberty to use their own ships for the purpose: nay, Buonaparte, with all his predilection for the slave trade, refused permission to the planters of Tobago, to import negroes on their own account in foreign bottoms.

On the other hand, the first advices of a new war with Great Britain, were accompanied, in all the colonies, with orders to open their ports again to all the former extent.

The hardiest champion of this commerce then, will now scarcely venture to deny, that it not only grew out of, but is to end with the war. Should we, however, hear again of any doubt on that point, or of the title to commercial advantages under a grant from our enemies, let the grant itself be produced; let a treaty between our enemies and any neutral power be shewn, by which the possession of these advantages is secured for a single moment.

Some engagement of that kind, might seem necessary, even to the security of the neutral merchants, if they really carry on the colonial trade, as they pretend, with their own capitals, and on their own account: for how are they to collect and bring away the immense funds, which they are continually representing, in our prize courts, to have been intrusted by them to their correspondents in the colonies, and to purchasers of their outward cargoes, resident there, if the ports, on the cessation of war, are suddenly subjected again to the ancient monopoly? We have, however, I admit, heard of no inconvenience having arisen from this source, subsequent to the treaty of Amiens. The doors were suddenly shut, but there have been no complaints that any neutral wealth was shut in. It had vanished, no doubt, like the gold and jewels of an Arabian tale, on the reversal of the talisman that produced it.

If then this trade has not the promise, or hope of existing beyond the war that gave it birth, the advantage arising from it in the war, is the palpable and only object of the enemy in opening it; and the neutral cannot in this, as in former cases, pretend that there was a different, or even a concurrent motive, such as may excuse his acceptance of the benefit. The service to the enemy, in a belligerent view, is the rent paid for the possession of a commerce, which is strangely pretended to be neutral: and the term is by tacit compact to cease, when that rent can be rendered no longer.

But, it is not only in its motive and purpose, that the transaction is of a hostile character. I have shewn, also, that the effects actually produced, are of a kind most directly hostile and injurious; that the commerce in question, not only protects, but strengthens our enemies, and puts maritime arms again into their hands, for our future annoyance and ruin.

This neutrality, is like that of the poetic deities, who, when it is unlawful to them, to engage in the battle, not only cover their favourite hero with a cloud, and withdraw him from the pursuit of his opponent, but restore to him the sword, which he had previously lost in the combat.

Let me, however, refer our Christian, though very unreasonable friends, to a better standard,

than that of poetic divinity. St. Paul holds himself an accomplice in the murder of Stephen, though he took no active part in it, beyond keeping the clothes of the assassins: but on the principle of the pretensions I am combating, this was *neutrality*. Nay, St. Paul might have innocently gone much further, than thus to facilitate the act, by the accommodation of those who were engaged in it. He might not only have taken care of their clothes, but furnished them with stones for their purpose.

Without attempting further to illustrate this very plain, though controverted subject, I conclude, that the illegality of this commerce, is as certain as its mischievous tendency; that to engage in it, is to interpose in the war, for the purpose of rescuing our enemy from the pressure of our superior naval force, or, in the terms of an expressive metaphor sometimes applied to it, "*hosti imminenti eripere hostem*;" and that the merchants who thus grossly violate the duties, have no claim to the rights, of neutrality.

Such is the obvious remedy for this grand evil in the war, and such our right of applying it.

The other abuses of the neutral flag, a particular examination of which does not belong to my present plan, admit not of so simple a cure;

for they chiefly consist in the fraudulent carriage of hostile property, under the cloak of a fictitious neutrality, in voyages which fall within the lawful range of neutral navigation. To these, therefore, no general remedy can be applied, unless a method could be found of either increasing, in the minds of neutral merchants, respect for the obligation of veracity, or obviating in our courts of prize, the deceptious influence of falsehood.

In truth, the unprecedented extent and success of fraudulent claims, is a natural and almost unavoidable effect of the long duration of maritime war, especially in a war, the circumstances of which have excited, beyond all former example, the efforts of deceit, in our enemies and their neutralizing agents.

To make this truth perfectly intelligible and clear, it would be necessary to spend more time than I or my readers can spare, in an exposition of the practice of the prize courts. I must be contented with observing, that the original evidence which is to justify a capture, and lead to condemnation, must be obtained from the captured vessel, either in the papers which are put on board by the alleged owners and shippers themselves, or in the testimony of the master and the other persons on board, when examined

on standing interrogatories. Since then the evidence all proceeds from the ostensible proprietors themselves, or from their agents, or witnesses in their service and pay, it cannot be supposed that facts will often be brought to light intentionally, which the true owners may desire to conceal. It may even create surprise, that a captor is ever able to establish a case in point of evidence, which will entitle him to a favourable sentence: nor would this often happen, if the standing interrogatories were not very numerous and close, and so wisely framed by the light of progressive experience, that it is difficult for a witness, not previously apprized of their terms, so to answer them all, as to support consistently, in all its parts, the necessary tale of falsehood.

But, unhappily, after a war has lasted long, the neutralizing agents, and the masters and officers they employ, become perfectly well acquainted with the nature of this ordeal of the prize court; so that the witnesses have a preconcerted answer ready to give to every interrogatory that is proposed to them. It is a well-known fact, that in certain eminent neutralizing ports on the continent, the master and other officers, usually interrogated in the Admiralty, are carefully and repeatedly examined by their employers, before the vessel sails, on our standing interrogatories, till they have learnt to

answer in all points, promptly and accurately, and consistently with the colourable case which is in the event of capture to be supported.

With equal skill and care, are those affidavits and documents now prepared in neutral countries, which the British prize court usually requires on a decree for further-proofs.—In short, every neutralizer of eminence, is become almost as expert in the rules of our Admiralty, in regard to evidence, as a proctor at Doctors' Commons.

It is evidently not easy to remedy evils like these; and the more difficult it is, the more indispensably necessary is it not to widen their range, by suffering that of the neutral flag, to be unlawfully extended.

The growing cunning and dexterity, of those who are the ordinary and fraudulent suitors in the prize court, can only be in any degree counteracted, by an increasing vigilance and patience of investigation, as well as increasing experience, in the judges; and for this, as well as other reasons, it was wise to appoint men of professional talents, with salaries adequate to the full value of their time, to preside in the vice-admiralty courts.

Is there after all, it may reasonably be demanded, no other redress for violations of neutral

duties, than capture and condemnation in the prize court? I answer, that though the offending party certainly ought to be punished by his own government, on the complaint of the injured belligerent, yet mutual convenience has given rise to the usage of leaving the latter, in ordinary cases, to avenge himself, by treating as hostile the property which is engaged in the offence; for otherwise, the trespasses of individuals might furnish endless occasions of diplomatic controversy between friendly nations.

New or extreme cases, however, generally demand a departure from ordinary rules; and the unprecedented grossness of the abuses which now exist, seems to me to demand, in this instance, an appeal to the justice of the neutral states against their offending subjects. Such a resort seems to be the more proper and necessary, on account of the querulous and contentious disposition which is said to have been lately exhibited by some of those powers, notwithstanding the extreme licence in which they have been hitherto indulged.

It is highly disadvantageous for an accused, but much injured party, to stand wholly on the defensive, and in a case like this, it tends perhaps to give colour to the accusation in the eyes of indifferent judges; nay, the people of the neutral

country itself may be misled, by the reiterated and noisy complaints of their own merchants, and of the disguised agents of our enemies resident among them, when unopposed by any expostulation on our part, or any exposure of our wrongs *.

Their ambassadors and consuls in England also, are perpetually solicited and stimulated by the captured neutralizers, of whose frauds they are no doubt ignorant, to represent their imaginary wrongs. These parties are always more troublesome than the genuine neutral merchant; and are the most clamorous asserters of the respect due to their flag, for the same reason that a fashionable sharper is, in his quarrels, often more punctilious than a real gentleman, in maintaining the point of honour. It is not his sentiment, but his trade. The neutral ministers, in consequence, present memorials and remonstrances; and their governments, perhaps, are induced to take up the dispute. But if abuses of the neutral flag were made grounds not merely of defence, but of voluntary and original accusation, and if the punishment of the offenders were

* There is great reason to believe, that the ministers or emissaries of the French government, procure the insertion in the American newspapers of many of those false and incendiary paragraphs, by which England, in spite of her extreme indulgence, is insulted and defamed in that country.

firmly demanded, the latter would often deem it prudent to be silent; while the neutral governments and their ministers, if they had serious and frequent complaints to answer, would have less leisure, and less inclination, to complain; they ought therefore, I think, under present circumstances, to be put in their turn on the defensive.

Our only effectual remedy, however, must be found in that ancient and just resort, the seizure and confiscation of the property, which is the subject of illicit transactions.

3d. *Of the Prudence of applying the proposed Remedy, in regard to the Colonial Trade.*

It remains only to consider, as I proposed to do in the last place, whether it is prudent to resort to that remedy for the evils which have been delineated, our right of applying which has, I trust, been sufficiently shewn.

In this, as in most other questions of practical policy, especially in the present very difficult times, it is vain to expect that the alternative to existing evil, should be complete and unqualified good. We are sailing in a tempestuous unknown sea, surrounded with rocks and shoals; and the question is not, whether, by changing our course,

we shall certainly have a prosperous voyage; but whether the ship will labour less, and the breakers in sight be avoided.

It has been shewn, that the extreme licence of the neutral flags, teems with mischiefs of a ruinous and fatal tendency to our commerce, to our colonies, to our wooden walls themselves, and to our best hopes in the war; and it remains to see, what new evils or dangers must be encountered, should this pernicious licence be restrained.

The sum of all these opposing considerations seems to be this, "we may provoke a quarrel "with the neutral powers." I propose, therefore, briefly to consider, first, the degree of this danger; and next, whether the evils of such a quarrel would be greater than those to which we at present submit.

It is certain, that should his Majesty's government think fit to recall the indulgent instruction that has been so much abused, and revert to the rule of the war 1756, with such modifications only as can be safely allowed, great clamours would immediately arise in the neutral countries. The neutralizing agents, deprived of a large portion of their fraudulent gains, would exclaim aloud against the measure; and even such merchants as have carried on the colonial trade on their own account, would not be well satisfied

to find their field of commerce materially narrowed by the assertion of our belligerent rights.

The neutral governments therefore would no doubt complain and remonstrate; " but would they, if firmly, though temperately, resisted, push the controversy into a quarrel? would they maintain their pretensions to the trade in question, at the expence of a war with Great Britain?" I firmly believe they would not; because I am sure they ought not, whether they regard their honour, their duty, or their interest.

Much though the principles of justice are unhappily made to bend to political convenience in the conduct of nations, they have not yet wholly lost their force. Like the merits of an honorary quarrel among gentlemen, they may at least serve for a basis of conciliation, between parties who have no very urgent motive, or determined inclination, to fight. They will save the point of honour; for a nation cannot be disgraced by receding from pretensions which are demonstrably groundless and unjust.

I cannot help hoping, however, that with our late fellow subjects of America at least, the equity of our cause will have a more direct and powerful influence; for I have marked as an auspicious omen, in this vernal season of their power, a reverence for moral principle prevailing in their supreme representative assembly, and triumph-

ing, in matters of interior legislation at least, over the suggestions of an ungenerous policy.

It cannot be supposed, that the great body of the American people are at this period partial to France, or inimically disposed to Great Britain. If they are insensible to the ties of a common extraction, and if the various sympathies of religion, language, and manners, that ought to incline them favourably towards us, have lost their natural influence, they still cannot be regardless of the interesting fact, that we alone, of all the nations in the old world, now sustain the sinking cause of civil liberty, to which they are so fondly attached. They see that the iron yoke of a military despotism is now rivetted on the neck of that powerful people, which aspires to universal domination, and which has already deprived its defenceless neighbours of the freedom they formerly enjoyed; nor can they doubt that the subjugation of England, would be fatal to the last hope of liberty in Europe.

Is the Atlantic thought a sufficient rampart for themselves, against the same despotic system? The people of America, are neither so ungenerous, nor so unwise, as to act on that mistaken confidence. They will advert to the state of things, which a disastrous issue of the present war might produce. They will contemplate the possible approach of a political prodigy, more

terrific than any that earth has yet beheld—France lord of the navies, as well as the armies, of Europe. They will look to the South, and see the resources of the Spanish American empire, in the hand of this Colossus; they will look behind them, and regard a large country, in which, were the British government subverted, religion, extraction, and language, would favour the ambition of France. Nor will they forget, that this unprincipled power is crafty, as well as audacious; that she well knows how to divide those whom she means to subdue; and has already broken confederations as sacred, as that of the American states.

It will not be thought, that the new world has no adequate temptations to attract the ambition of the French government, or to excite it to arduous efforts. The armies of St. Domingo will be remembered. Nor will the constrained and prudent cession of Louisiana, efface the recollection of that alarming line of policy, by which it was acquired.

But should America be safe, in her distance, in her unanimity, and in her interior defensive resources, still what would become of her commerce, if France were enabled to give law to the maritime world?

Is it supposed, that Buonaparte, or his imperial successors, will tolerate in their ports, a moment

longer than is necessary, a republican flag? Vain imagination. Had he even no antipathy to freedom, the plague, or the yellow fever, would have less terrors for him, than such a mischievous memento to "his best and greatest of peoples." At this moment, he relies on the evident necessity of removing such dangerous examples, as a sufficient apology to Europe for putting crowns on the heads of the nominal republics around him*.

The citizens of the United States are a sagacious people, and will reflect on these things. They will see that they have a commercial interest, at least, if not interests of far greater importance, which forbid their aiding France at this alarming conjuncture, to overthrow the independence of Europe.

Widely different was the face of affairs in 1794 and 1795, when their commerce with the French colonies was a subject of dispute with Great Britain. It was natural at that period, that the people of America should have good wishes for the liberty of France, and some jealousy of the confederated powers. Yet even then, they were too wise, and too just, to rush into a quarrel with this country, in support of their present extreme and unfounded pretensions; though the instruction of November 1793 had, as I have already admitted, given them some specious grounds of

* See one of his answers to the Austrian manifesto.

complaint. The legal merits of the question were then, as I fear they still are, very little understood in America; but the wisdom and moderation of Mr. Jay found a middle point of agreement; and though, unfortunately, the same spirit did not prevail among his constituents, so far as to induce them to ratify the treaty throughout, we may reasonably regard the conduct of the American government at that time, as a proof of the pacific temper of the people; and as a pledge, that the strong equity of our present case will not, under the more favourable circumstances of the times, be obstinately disregarded.

Happily, we have not here to do with a people, to whose understandings and feelings no open appeal can be made.

I regard as not the least perilous circumstance in the present situation of Europe, that by the unprecedented despotism exercised over the press in France, in a positive, as well as negative mode, an ardent and intelligent people can not only be kept in profound ignorance of the true nature of public events, and the real conduct of their government towards foreign nations, but be impressed with a belief of facts diametrically opposite to the truth; for by these means they can be made to engage cordially in any measures that the government may chuse to adopt, however contrary to their own honour

and interest, as well as to the safety of their neighbours. The case seems absolutely new; not only in degree, but in species; for the ministers of France, professing only to direct an official corner in one of their many newspapers, are in truth the political editors of all; and they even oblige such foreign prints, as they allow to be brought into the country, to usher in, or confirm, their own mendacious statements; so that a curious public is actually starved into the digestion of their poisonous intelligence, from the want of any other food.

Under other despotic governments, if the people have had no means, they have had as little inclination, to canvass affairs of state. Ignorant and indifferent, their bodies have been at the disposal of the sovereign; but popular opinion, and feeling, are powerful engines in the hands of a government, which their character could not supply; and hence the strength of an absolute, has been counterpoised by the spirit and energy of a free constitution: but by inviting a highly civilized people to reason, and cheating them with fallacious premises, both these advantages are formidably united. The public, in this unnatural state, becomes a centaur, in which brutal force is monstrously associated with the powers of a rational agent.

But in America, the government, if it could be

supposed to feel the wish, has not the power, so to influence popular opinion. The grounds of every public measure, more especially a measure so awfully serious as war, must be fairly known, and freely canvassed by the people. They will hear, and examine, the reasons which demonstrate the commerce in question to be an invasion of the rights, and dangerous to the security of England; and if, less generous than the Carthaginians, they feel no wish to succour their parent country, when fighting for her liberty and her existence, they will at least desist from positive wrongs, which augment her dangers, and frustrate her defensive efforts.

On the probable feelings and conduct of the neutral courts in Europe, I forbear to hazard so confident an opinion. While I write, every wind wafts over from the continent rumours of new wars, new alliances, new declarations of neutrality, and new breaches of those declarations; so that it is impossible for any private judgment to foresee, whether any, and what European powers will sustain the neutral character, when these sheets issue from the press.

Beyond doubt, the accession of new parties to the war, will materially affect the tone of neutral pretensions on this side of the Atlantic; and, I trust, not unfavourably to the true principles of the maritime code. The generous and magnanimous policy of our allies, will induce them

to respect the rights of neutral nations; but they can have no wish to favour abuses, which tend to feed the revenues of France, and to defeat the best efforts in offensive war, that can be contributed on the part of Great Britain. It is their part, chiefly to oppose the armies of the common enemy in the field; it is ours, to diminish greatly the resources by which those armies are maintained, and to make the French people feel, in their commerce, the evils of war, in spite of their lying gazettes; but to countenance the present encroachments of the neutral powers, would be to forbid that essential assistance; and to render our active co-operation feeble, if not absolutely useless.

Both in Europe, however, and in America, we have still stronger grounds of hope, that our just rights, if firmly asserted, will not be resisted at the cost of a war; for the plain interest of the neutral powers themselves will incline them to an opposite course.

What, after all, is to them the value of this new commerce, by which our enemies profit so largely? A few merchants, or pretended merchants, are enriched by it, chiefly through fraudulent means; but their ill-gotten wealth, will, with the common fate of opulence suddenly and unjustly acquired, speedily vanish away; without leaving any lasting effect on the commerce of their country, except the taint of

their immoral practices, and their exotic luxury of manners.

In North America especially, such will be the certain result. A great many of her most eminent neutralizers, and West-India merchants, are natives, either of the belligerent countries with which they trade, or of other parts of Europe; and when the business of the war is finished, they will not stay to contend, in the permanent commerce of America, with her frugal and industrious citizens; but return to more congenial regions, with the fortunes they have rapidly acquired (P). Even with the native Americans themselves, the effect of wealth forced in this commercial hotbed, will be a strong disposition to migrate, when peace puts an end to their trade; for it is not to be dissembled, that this new country has not such attractions as Europe, for merchants who have grown suddenly rich in it, by means of exterior connections.

Far superior in every country, but especially in one that is newly and imperfectly settled, is the value of that commerce which is the natural growth of the place, which feeds on, or sustains, its manufactures, its agriculture, and the industry of its people, and is therefore permanently affixed, as it were, to the soil; to that

(P) See Appendix.

of a commerce temporary and extraneous, which is prosecuted to and from a foreign land, and has no connexion with the country of the merchant, but that of mere passage and sale. Yet, in the neutral countries, the former and more estimable species of commerce, is impeded in its growth, and even reduced in its extent, by the artificial increase of the latter. That which may be called the native commerce of the country, is kept down and discouraged, by the diversion of capitals, the increase of freight and wages, the advanced price of warehouse-room, and inland carriage, and of the other various expences attendant on the importation or exportation of goods; all which are necessary effects of a great and sudden increase of mercantile operations, at a neutral port, through its trade with belligerent countries.

Besides, it unavoidably happens, that the frauds which are committed in the new branches of commerce opened with belligerents, fall heavily, in their effects, on the honest part of the mercantile body in the neutral country, even when conducting their ancient and natural commerce. Their ships and cargoes are involved in the general suspicion deservedly attached to their flags, to their commercial documents, and the public testimonials they carry.

They are consequently seized, brought into port, and, perhaps, on examination, discharged.

But they have sustained considerable loss by detention; and what is to be done? Is a captor to be punished for suspecting the truth of documents, which, in a great majority of similar cases, are notoriously false? It would be like punishing an officer for taking up on suspicion an honest man, but a stranger to him, whom he found in company with felons. Were captors to pay costs and damages in such cases, it would be charity to our naval officers to renounce altogether the right of maritime capture; yet, if the capture is held justifiable, a fair trader smarts for the sins of his countrymen—the rate of insurance, as well as all other charges, is consequently raised on neutral shipments in general.

The old and genuine Prussian merchants, as I am well informed, complain greatly of these evils; and murmur at the improper use that is made of their flag, as freely as they dare.

But in the case of America, able as she is to enlarge her permanent commercial establishments in various directions, to the utmost extent that her capital or credit can afford; and unable, from the want of hands, to promote sufficiently that vital interest, the extension of her agriculture, the encouragement of a temporary carrying trade, at the expence of her native commerce, must be peculiarly impolitic. It is, as if a landholder should take a scanty provision of manure from his freehold lands, which are in urgent

want of it, to dress a field of which he is tenant at will.

I cannot believe, therefore, that the intelligent citizens of the United States, unengaged in the new-found colonial commerce, would be very sorry to see it restrained; much less that they would tenaciously defend it, at the cost of an evil so destructive to their growing prosperity, as a war with Great Britain (Q).

Let it be considered, that the trade in question is but a part of that new and lucrative commerce, which the war has conferred on the neutral nations in general. Were their trade with the colonies of our enemies wholly cut off, many other very valuable branches of commerce would remain, which they hold by no other tenure than the neutrality of their flag.

But it is not my purpose to recommend a total and unqualified prohibition, of even the colonial trade; I have maintained, indeed, our right to interdict it without reserve, on the assumption that it was wholly prohibited by the enemy in time of peace; a proposition generally true, but which is liable to an exception, that I have hitherto forborne to notice.

At certain free ports in the French islands, the importation and exportation of some specified commodities under a foreign flag, were al-

(Q) See Appendix.

lowed, before the commencement or contemplation, of the last war. Several articles of provisions, lumber, and two or three more enumerated commodities, produce of North America, and with which the West India islands are usually supplied from that country alone, could be imported by foreigners in their own vessels; and they could receive in return, those inferior articles of colonial produce, rum, taffia, and molasses. Thus far, therefore, an exception to the rule of the war 1756 is, perhaps, demanded by the principle of that rule, in favour of the free ports; and it seems due also in respect of all the ports of the hostile West India Islands, on another score; for we have relaxed our own colonial monopoly, in an irregular manner, during the last and present war, in all our islands, to the extent of permitting the importation of American provisions and lumber, and the exportation of rum and molasses, in vessels of the United States; and it is right to admit in such cases the principle of reciprocity.—"*In jure belli, quod quis sibi sumit, hostibus tribuendum est.*"

This maxim, indeed, can apply no longer than while we persevere in permitting the irregular practices which now prevail in the ports of our own islands; especially as the enemy, in concert with the neutral merchants, began the innovation; and by the great extent to which it was carried,

absolutely obliged us to follow in some small degree the same line of policy. But we might, as a voluntary sacrifice to amity with the neutral powers, allow this limited commerce to be permanent, and general throughout the West Indies; and might even without any very serious mischief, extend to all the ports of the hostile colonies, the privileges enjoyed by foreigners at the French free-ports, in time of peace (R).

By such concessions, it is true, our belligerent rights would be narrowed, and the hostile colonies, in some measure, relieved from the pressure of the war; but if the more valuable articles of their produce, their sugar, coffee, cotton, cocoa, indigo, and bullion, were prevented from eluding our hostilities under the neutral flags, the greater part of the existing evils would be remedied; and the landholders of America, having the same markets for their produce, as under the present licentious system, would all find their interests on the side of conciliation and peace.

If permitted to retain such a portion of the trade in question, together with all the residue of their existing commerce, as far as it is the fair fruit of their neutrality, in every quarter of the globe, what motive could these nations find for asserting their further, and unjust pretensions, by arms?

(R) See Appendix.

To suppose that commercial interest, would excite them to do so, is to suppose, that for the sake of a part, they would wilfully sacrifice the whole.

The neutralizing agents themselves, would be the first to shrink from a definitive quarrel.—They would clamour, while they hoped to prevail in extorting from our fears or our prudence, acquiescence in all their lucrative encroachments; but when convinced by our firmness that this end is not attainable, they would become, instead of sticklers for war, the staunchest advocates for peace. They will not be so simple as to ruin their own business, by exchanging the neutral, for the belligerent character.

I rely not, however, on these men, but on the equity and good sense of their countrymen at large, who know how to distinguish between the selfish clamours of individuals, and the dictates of national prudence. Our brethren of America, especially, know how to value the blessings of peace; and the wise government of that country has shewn itself, in this and all other points, in unison with the sense of the people. They will not, therefore, suffer their passions to be inflamed by groundless suggestions, and plunge into a war, against the clearest dictates both of policy and justice.

Since, however, it is right in so important a case to calculate on every chance, and to be prepared for every possible consequence, of a change of system, I will, in the last place, suppose, that the only alternative to the sacrifice of our maritime rights, is a quarrel with the neutral powers.

If so, the question is, which of these two great evils is the worst; and I hesitate not to answer, beyond all comparison, the former.

The arms of the powers now neutral, added to those of the present confederates, if so monstrous a coalition could be imagined, would add something, no doubt, to our immediate dangers; but acquiescence in the present abuses, must, unless the power of France be broken on the continent, ultimately insure our ruin. Looking forward, as we are bound in prudence to do, to a long-protracted war, it is demonstrable, from the premises I have shewn, that we must, before the close of it, lose our naval superiority, if the enemy is allowed to retain, and still continues to improve, his present oppressive advantages.

While he is preparing the means of active maritime enterprizes, we are reduced at sea, as well as on shore, to a mere defensive war. While our colonies, and our colonial commerce, are labouring under great and increasing burthens, those of the enemy, comparatively unencumbered, are

thriving at their expence. While freight, war duties, and insurance, are advancing in England, the expence of neutralization is daily diminishing in France, Holland, and Spain. Competition, and the safety of neutral carriage, are reducing it every day. Mean time, the hostile navies are nursed, augmented, and reserved in safety for a day of advantageous trial; while our own is sustaining all the most laborious duties of war, with scarcely any of its ancient encouragements; our seamen, also, are debauched into foreign employ, to carry on the trade of our enemies. In what must this progress end?

"But our trade, would be materially injured "by a war with the neutral powers." It would, probably, be so in some degree; at least in the beginning; nor am I insensible of the great importance of such an inconvenience, in a view to immediate revenue.

But these considerations, important though they are, may be justly superseded by others. To sacrifice our maritime rights, for the sake of our custom-house-entries, would be like keeping up the pulse of a hectic patient, at the expence of his vital organs, instead of that more rational treatment, which, though weakening at the moment, can alone lead to a cure.

Our two great rival statesmen, though their views unhappily do not often coincide, have

agreed in declaring our unexhausted means of finance to be still copious; and their concurrence in such an opinion is highly consoling. But, if we dare not assert our essential maritime rights, for fear of reducing our exports, they are both greatly mistaken. We are already at the end of our resources. It is idle to say that we are still able to carry on the war, if we cannot carry it on without renouncing, for the sake of revenue, the means of making war with effect. It is like a soldier selling his arms, to enable him to continue his march.

The notion, however, that any great diminution of our trade, would result from the supposed quarrel, is not better founded than the fear of the quarrel itself.

Is it asked, "who would afterwards carry our "manufactures to market?" I answer, our allies, our fellow subjects, our old and new enemies themselves. In the last war, nothing prevented the supplying of Spanish America with British manufactures, in British bottoms, even when they were liable to confiscation by both the belligerent parties for the act, but that the field of commerce was preoccupied, and the markets glutted by the importations under neutral flags*.

* Case of the Chesterfield, at the Cockpit, 1804.

"But would I advise a toleration of these "new modes of relieving the hostile colonies?" Its toleration would not be necessary. Even your own hostilities would not be able to overcome the expansive force of your own commerce, when delivered from the unnatural and ruinous competition, of its present privileged enemies. You might often capture the carriers of it, and condemn their cargoes; but the effect would chiefly be to raise the price upon the enemy, and the difference would go into the purses of your seamen. The prize goods themselves, would find their way from your colonies into the hostile territories.

But I do not affirm, that it would be necessary or proper in the case supposed, absolutely, and universally, to refuse protection to British merchandize, when passing to the enemy, or colonial produce received in exchange for it, in British, or even in hostile bottoms.

At present, the royal prerogative of suspending the rights of war, in favour of particular branches of commerce, or particular merchants, is very liberally exercised. Papal dispensations, were not more easily obtained in the days of Luther, than dispensations from the law of war now are from his majesty's government: but let it be remembered, that when the Pope thus relaxed the ancient war of the church against

sin, he shook his own supremacy; and these salt-water indulgencies, tend perhaps to produce a similar effect, on the maritime greatness of England. I am far from blaming the exercise of this wholesome prerogative, in a moderate degree, and upon well investigated grounds; as for instance, when it enabled our merchants to import corn, during a scarcity, from Holland; but when it is used for the mere convenience and profit of every merchant who chuses to apply for it, and who can offer some flimsy *ex-parte* suggestion of public utility, in his petition for a licence; the practice becomes a new and dangerous inroad on that great maritime system, which it behoves us so much to maintain.

Should, however, the neutral powers be insane enough to go to war with us for the sake of the colonial trade, the well regulated use of this prerogative, would soon shew them their folly; and obviate every inconvenience to which our own commerce might, in consequence of the new war, be exposed. Though I cannot undertake to defend the consistency of licensing to British subjects a trade with the enemy, from which we claim a right to exclude neutral nations, yet should those nations attempt to compel a surrender of that important right, by cutting off our commerce, the remedy would be consistent and just. The distress of the hostile colonies

would soon present most tempting markets for our merchandize;—the demand also would be great in the United States; and America would be unable to prevent even our own merchants, from being the carriers of British manufactures to her own ill-guarded coast, as well as to the ports of our present enemies. If the strict revenue laws, and naval force of Great Britain, cannot prevent smuggling and trading with an enemy by her own subjects, how is this new power, with its lax government and feeble marine, to restrain its merchants from similar practices (S)?

Should it be found necessary in the case supposed, to licence any commerce of this kind, whether in British, or foreign bottoms, we might, as far as respects the trade of the hostile colonies, have the benefit, without the disadvantage, of the present traffic. Not a hogshead of sugar, in the case supposed, ought to be protected from the hostile West Indies, except in its way to the British market; there to be taxed in such a detree, as would preclude the present superiority of the enemy in a competition with our own planters. Neither ought a single article to be carried by licence to those colonies, that can serve to extend their existing scale of cultivation.

(S) See Appendix.

I protest, in every event, on behalf of the British planter, against the further settlement of Cuba, by a relaxation in any mode, of the rules of maritime war. During the last war, the produce of that vast island was at least doubled; and if the present system continues, it will soon be doubled again, to the destruction of our own sugar colonies; for the consumption of West India produce in Europe, has natural limits; and the Jamaica Assembly has satisfactorily shewn that those limits are scarcely now wide enough to receive the actual supply, at such prices as the British planter can possibly afford to accept.

The same observations which I have offered as to the new channels of commerce, which we might have to explore in our transatlantic trade, apply equally to Europe. Besides, there would here, still remain friendly territory on the continent, the ports of our co-belligerents, and even maritime powers, neutral in relation to them, whose countries would be *entrepôts* for our commerce. The bugbear of a non-importation agreement by America, is liable to the same remarks, and would be a measure more absurd even than war, on the part of that country; for it would injure herself alone.

After all, what am I endeavouring to combat?

The notion, that manufactures in demand all over the globe, for their superiority in quality, in cheapness, and, even in the case supposed, for safety in maritime carriage, can be effectually excluded from the commercial countries in which they are at present consumed!—I might have more briefly appealed to the first principles of commercial science. I might have appealed even to the impotent attempts of France in the last and present war. I might further support myself by the fact, that in the utmost latitude given to neutral commerce in the colonies of Spain, there was an express and anxious exception of British merchandize, which was almost wholly without effect*. But the intelligent reader will dispense with all such arguments. He may not, indeed, be able to foresee clearly what will be the new channels of our trade, when the old are forcibly obstructed; but he can look down on the level below, the regions of the existing demand and consumption, and be certain that there the stream will soon meet his eye again, in spite of the new artificial mounds and embankments.

In a word, take care of your maritime system, and your commerce will take care of itself.

Were it not necessary to hasten to a conclusion, I might shew, that the commerce of this country,

* Cases of the Vera Cruz and the Emelia.

is much more endangered by the existence of the present abuses, than it could possibly be by any effects of their correction. The case of our colonial trade, has been the only commercial evil which I have distinctly considered; but that of the merchants trading with Germany and Flanders might afford another striking instance of the mischiefs of a licentious neutrality: it has been lately stated to the public, in a compendious, but forcible manner, on the part of the suffering merchants, and apparently by one of their body*.

It may be right to notice another alarm, that has been grafted on the idea of a quarrel with the United States. America, it has been said, is much indebted to our merchants; and she will confiscate their property. America, I answer, is too wise, and I believe, also, too observant of national honour and justice, to adopt so opprobrious a measure. It would be an act subversive of all future faith and confidence, between herself and the merchants of Europe; it would not only stain her character, but materially retard the growth of her commercial interests, in every part of the globe. She will now, should a quarrel ensue, have no pretence for any other resort, than that of honourable war. At the period of 1794,

* See some essays in the Times, in September last.

she pretended, with some shew of reason, tha she had been unfairly surprised, by an order to capture her vessels, without previous notice or complaint: but no room, of course, will be given for such a charge at this time, should our government wisely resolve to assert our belligerent rights*. If the citizens of the United States, can possibly be persuaded to think, that we are bound to submit to the ruinous effects of that assistance to our enemies, which they chuse to call neutral commerce, at least it will be felt, that our resistance is no act of wanton enmity, much less a provocation to more than legitimate war.

There is however, another security against such an injurious and disgraceful act on the part of America; or rather against any quarrel whatever with that power at the present conjuncture. The property under the American flag, which would be now exposed to our hostilities in every part of the world, is immense. In 1794, the merchants of the United States were few and

* Let it not be supposed, however, that there is any shadow of ground for the complaints now making, of want of notice respecting the collusive double voyages: the judgments in the cases of the Essex, the Enoch, and Rowena were founded on a rule already known in America; and which the claimants were fraudulently attempting to elude.

poor; now, they are many and rich; then, the collective value of their property at sea, might be very small in comparison with what they owed to our merchants; at this time, after the large deductions that ought to be made for property which is but nominally their own, the former must bear a large proportion to the latter.

But America, though rich in commerce, is not so in revenue; and were her trade destroyed by the effects of a rupture with this country, a great burthen of war taxes must be immediately imposed on the landholders; who have no debts to English merchants to retain; who, as I have shewn, would have no interest in the war; and who are neither very able, nor very well disposed, to submit to a heavy taxation (S).

Those, in short, who suppose that America would be easily now brought to engage in a war with any great maritime power of Europe, know little of the commerce, and less of the interior state of that country.

Such are my reasons for believing, that a quarrel with the neutral powers would not be the price of asserting our maritime rights in respect of the colonial trade; and for concluding that such a quarrel, if certain, would be a less formidable evil, than those to which we at present submit.

(S) See Appendix.

Should any reader be disposed to dissent from both these propositions; he will, perhaps subscribe to a third—It would be better, by an express and entire surrender of that ancient maritime system on which all our greatness has been founded, to put ourselves on a par with the enemy, as to the advantages and disadvantages of neutral commerce; than continue to submit to these ruinous innovations, of which all the benefit is his, and all the evil our own.

Let us subscribe at once to the extravagant doctrines of Schlegel, or to those of Buonaparte himself; let us admit the old pretension of "free ships free goods," and that the seizing hostile property under a neutral flag, is piracy, or maritime despotism—then, following the example of our enemies, let us suspend our navigation laws, that we also may have the benefit of neutral carriage, in all the branches of our trade—let brooms be put at the mast-heads of all our merchantmen, and their seamen be sent to the fleets.

By no means short of these, can we be delivered from the ruinous inequalities under which we at present labour; and these, alarming though their novel aspect may be, would in truth be less evils, than those which the present system, if long persevered in, must unavoidably produce.

It would, however, be a still better expedient, if the enemy would kindly concur in it, to abjure, on both sides, the right of capturing the merchant ships, or private effects of an enemy—in other words, to reconcile, as some visionaries have proposed, a naval war with a commercial peace. Our neutral friends might then be dismissed by both parties; and would, perhaps, in the next war, be content to gather up the chief part of the spoils of the weaker belligerent, without wrangling, as now, for the whole.

But the French government is, probably, too conscious of its present advantages, to concur in this arrangement: nor would it, I verily believe, consent to respect British property, when passing under the neutral flag, if we were disposed to an equal forbearance.

What then remains to be done?—to make peace with Buonaparte?

It is the utter impracticability of such an expedient, that gives to my subject its most anxious and awful importance. His power and his pride may possibly be broken by a new war on the continent, or new revolutions may deliver France from his yoke; but if not, we are only at the commencement of a war, which our long-continued maritime efforts alone can bring to a safe, much less a prosperous close. You may make *treaties* with Buonaparte, but you cannot make *peace.*

He may sheath the sword, but the olive-branch is not in his power. Austria may have peace with France, Russia may have peace with France, but Great Britain can have no real peace with that power, while the present, or any other military usurper, brandishes the iron sceptre he has formed, and is in a condition to hope for our ruin.

Am I asked what is the insuperable obstacle? I answer, "the British constitution." I can repeat, *ex animo*, with the church, that we are "fighting for our liberty and our laws;" for I believe that their surrender alone could obtain more than a nominal peace.

France, under her ancient monarchy, could look across the streights of Dover without envy or discontent; for her golden chains, burnished as they were by the splendour of genuine royalty, rivetted by the gentle hand of time, and hallowed by a reverence for ancient hereditary right, were worn with pride, rather than humiliation or dislike. The throne stood upon foundations too strong, as its possessors fully thought, to be endangered by the example, or by the contagious sentiment of freedom.

But can the new dynasty, entertain a similar confidence?—Let Buonaparte's conduct and language attest, that he at least, is not so simple. During that brief term of pretended peace, to

which he reluctantly submitted, what was his employment out of France, as well as within that country, but the subversion of every thing which approached the nature, or bore the name, of freedom? In his treatment of the little states around him, he was even ostentatious of his contempt of the civil liberty they enjoyed or boasted, and he does not scruple now to avow, in the face of Europe, the very principle I am ascribing to him, though in different language, in his apology for his treatment of Genoa and the Italian republic.

English liberty was happily beyond his reach; and it was necessary to temporize, while a contest with the negroes suspended those preparations for a new war, which he would soon have made in the western world, and in India; but his gazettes exhibited incessantly, not only his hostile mind, but the true cause of its hostility. Our freedom, especially the freedom of our press, was the subject of frequent and bitter invective. By political hints, lectures, and addresses, he laboured incessantly to convince Frenchmen, that there is no possible medium in society, between anarchy and his own military despotism; but, as the known case of England was an unlucky knot in this theory, which he could not immediately cut asunder with his

sword, his next, and anxious purpose, was to confound our freedom with licentiousness, to render it odious, and to hint, as he broadly did, that it is incompatible with the common peace and security of Europe.

Had he not even the audacity to remonstrate to his Majesty's government, against the freedom of our newspapers, and to demand that our press should be restrained? But we cannot be surprised at this—Darkness, as well as chains, is necessary for his system; and while it is light at Dover, he knows it cannot be quite dark at Calais.

The enmity of this usurper, then, is rooted in a cause which, I trust, will never be removed, unless by the ruin of his power. He says, "there "is room enough in the world both for himself "and us." 'Tis false—there is not room enough in it, for his own despotism, and the liberties of England. He will cant, however, and even treat, perhaps, in order to regain the opportunity which he threw away by his folly and guilt at St. Domingo, and his splenetic temper at Paris.—He would make peace, I doubt not, anew, that he might recover the means of preparing better for war; but would be impatient and alarmed, till he could again place the fence of national enmity, between the people of England and France.

These prospects, I admit, are cheerless; but let us not make them quite desperate, by surrendering our natural arms. There are conjunctures in which

> " Fear, admitted into public councils,
> " Betrays like treason."

—But the reins are in no timid hands*—and, after all, unless we mean to abandon all that remains yet unsurrendered of our maritime rights, peace is more likely to be maintained with the neutral powers, by a firm, than a pusillanimous conduct; for experience has shewn that they will not be content, while any restriction whatever remains on their intercourse with the enemy, which fraud cannot wholly elude.

To conclude.—A temperate assertion of the true principles of the law of war in regard to neutral commerce, seems, as far as human foresight can penetrate, essential to our public safety.

In Him, at whose command "nations and "empires rise and fall, flourish and decay," let our humble confidence be placed; and may we

* I trust this proposition is still true. Were it otherwise, I should echo the dying exclamation of the great man to whom the passage alluded, and say, *O my country!* with a sigh, not of anxiety, but despair.

be convinced, that to obey his righteous laws, is the soundest political wisdom, the best provision we can make for our national safety, at this momentous and awful period!

But, if he wills the end, he wills also the adequate means—Let us not, therefore, abandon the best means of defence he has given; let us cherish OUR VOLUNTEERS, OUR NAVY, AND MARITIME RIGHTS.

APPENDIX.

☞ *The number indicates the page of the present edition, to which the note belongs.*

47, (A).

THERE is an instruction of the present war which authorizes, for a limited time, the carrying on trade "directly from "the colonies of the enemy, to the ports of this kingdom, in "neutral ships, laden solely with the property of inhabi- "tants of the neutral country to which the ship belongs." This instruction issued on the 17th day of August last; but the author thought it unnecessary to notice it in his first edition, because it was expressly limited to such ships "as had "already cleared out, or should clear out, from the hostile "colonies, prior to the first day of November" then next. It therefore evidently arose from some special and temporary consideration; and not from any design of renewing generally in favour of this branch of trade, the licence of the last war.

The ground, it is said, on which his Majesty's government thought fit to accord this brief indulgence, beyond the limits

of the subsisting general instruction as to the colonial trade, was an error into which certain merchants were alleged to have been led by the terms of a late act of parliament; an error, under the influence of which they had innocently ordered shipments from the Havannah directly for England, supposing the trade to be legal; and had not time to recal their orders. The author cannot undertake confidently, or clearly, to explain the case which was proved or represented on this occasion; but it is plain that the instruction could only be meant to sanction adventures actually depending; since the time allowed was too short, especially at that season of the year, for the transmission of funds, or even of letters, so as to obtain shipments from the West Indies which had not been previously ordered and prepared.

60, (B).

This statement, I understand, has been objected to, on the ground that the law of the United States on this subject is general, and makes no distinction between the trade with the belligerent colonies, and any other branch of commerce, in which goods liable to duties, are entered with a view to re-exportation. I admit that the law is general; but the fact nevertheless plainly is, that it was framed to give facility to this trade with the colonies of our enemies, in which alone, generally speaking, goods are imported into the United States with a view to re-exportation, except such trade from the British East Indies, under the treaty of 1794, as is carried on in a like indirect course to the continent of Europe, and is the subject of the same commercial policy.

The numerous and elaborate provisions of the act of March

1799, scarcely specify any other articles, than such as are the ordinary and peculiar subjects of trade between Europe and the West-India colonies.—These, are the only examples given in their forms of entry, &c.: and when a proviso was made in sect. 75, enabling the exporter, in cases of need, to alter or renew the packages in which the goods were imported, without prejudice to the drawback, so exclusively was the colonial trade in the contemplation of the legislature, that *coffee, cocoa, unrefined sugars,* and *liquors in casks,* (in which last description, wines and brandies, most important subjects of shipment from France and Spain to their colonies, were no doubt chiefly in view,) are the only articles in respect of which that necessary indulgence is given. In short, it is impossible to read this act, the longest, perhaps, and most complex in the whole American code, without perceiving that the leading, if not the only object of its authors, was to make the most of those large concessions of this country which were contained in the Royal instruction of the preceding year, by giving every legal facility to the indirect trade in question, that consisted with the security of the duties on imports consumed in America.

The act gives one positive encouragement to the importer, which is, if mistake not, a novelty in fiscal legislation. On giving bond for the duties, he receives from the Custom House a debenture for their amount, although nothing has been paid; and this instrument is expressly made negotiable by indorsement, like a bill of exchange, and if not duly paid, bears an interest of £6 per cent. against the original holder or indorser. It is not indeed payable at the Custom House till the bond in respect of which it issued has been paid; but as this bond is conditioned, for either the payment of duties, or re-exportation, within twelve months, the merchant by this arrangement obtains, without any advance, the use of a kind of government paper currency for that period, as a bonus on his adventure, beyond the ordinary commercial induce-

ments to engage in the colonial trade. (See sections 75, 80, 81.) The state, however, has some share in the profit; for one and a half per cent. on the amount of the duties was by this act retained on the exportation; and this reservation has since, I find, by an act of May, 1800, been raised to a per centage, also on the duties, of three and three quarters.

The charge however is still very moderate, for I am well informed, that with the addition of custom-house fees, it does not exceed on an average, $1\frac{1}{4}$ per cent. on the value of the commodities.

It should further be observed, that an importer who chuses to report, absolutely, for re-exportation, and who therefore is not allowed to land the cargo, wholly avoids this charge; for he gives a bond conditioned simply that the goods shall not be landed. But this, the reader will observe, would not satisfy the British courts of Admiralty. Is it not fair then to conclude, that so many anxious regulations to provide for the case of an importer who wishes to land the goods, with a power of re-exportation, would not have been made, but for the very purpose of facilitating the collusive voyages in question?

If the author is not misinformed, a recent act of the United States has given such additional accommodations to this branch of trade, as make the design of eluding the rules of our prize court, still more conspicuous.

67, (C).

Since the first edition of this work was published, an attempt has been made to mislead the public, and to support the pretence that the decisions above explained were an unjust surprise on the American merchants, by the publication of a report made by his Majesty's advocate general, in March,

1801, and transmitted by the secretary of state to Mr. King, the American minister, in consequence of a complaint made by the latter against the vice-admiralty court of New Providence. (See the Times, and other newspapers of October 31.)

The report, and the correspondence which produced it, were published without a comment; which, if not the fairest, was at least the most prudent course; for though a hasty and ill-informed reader, might perhaps be led to apprehend from that confident mode of publication, or from some single member of a sentence, which his eye might carelessly detach, that these papers really gave colour to the complaints in support of which they were adduced, it is absolutely impossible to reason upon them, or apply them to the case in controversy, without discovering that they have a directly opposite effect.

The King's advocate, had he expressed himself incorrectly or obscurely, would have deviated strangely from his general habits; but it seems impossible to compare his report on the subject in question, with the account I have given of the principles of judgment, and course of decisions, in the prize court, without perceiving that they are perfectly in unison with each other.

At the date of this report, the case of the Polly, —Lasky, (supra p. 57) was the last decision on the subject of the double voyages; and our prize courts had not yet discovered the futility of the pretence of paying duties in America; or the unsoundness of the inference that had been drawn from that misrepresented fact, and the circumstance of landing the cargo, in favour of the original intention of the importer. At that time, therefore, the King's advocate naturally reported as follows:

"What is a direct trade, or what amounts to an intermedi-
" ate importation into the neutral country, may sometimes be
" a question of some difficulty. A general definition of ei-

" ther, agreeable to all cases, cannot well be laid down. The
" question must depend upon the particular circumstances
" of each case. Perhaps the mere touching in the neu-
" tral country to take fresh clearances, may properly be con-
" sidered as a fraudulent evasion, and is in effect the direct
" trade; but the high court of admiralty has expressly de-
" cided (and I see no reason to expect that the court of ad-
" peal will vary the rule) that landing the goods, and pay-
" ing the duties in the neutral country, breaks the conti-
" nuity of the voyage, and is such an importation as lega-
" lizes the trade, although the goods be re-shipped in the
" same vessel, and on account of the same neutral pro-
" prietors, and be forwarded for sale to the mother country
" or the colony."

The preceding part of this report had expressly stated the general principles of law arising on the royal instructions, as they have been stated in this work; and in what manner do the above passages, jar with the account which has been given of the judicial application of those principles?

The question is not whether the advocate general, if he had foreseen the frauds which have since come to light, could have more explicitly guarded his opinion against any forced and artful construction which might be unfairly made in favour of those frauds; but whether his language can fairly be construed to mean, that landing the goods, and paying the duties, would legalize a transaction, the detected and indisputable object of which was, to use his own words, "*a fraudulent evasion*" of the legal rules and principles which he had immediately before laid down. Now, what sense can possibly be put on the former part of the above extract, that will consist with this construction? How could the effect of an intermediate importation depend in point of law, "on the *particular* circumstances of each case," if the *general* circumstances of landing and paying duties, were enough in every case, and without respect to the motive of the importer, to legalize the

subsequent voyage? The meaning undeniably is, that the legal effect of the importation, turned on the question of fact, whether the transaction was evasive or ingenuous; but that a recent decision had held the facts of landing and paying of duties to be, in general, sufficient evidence that it was ingenuous and not evasive, when the only circumstances leading to an opposite conclusion, were such as the report describes, namely, "a "reshipment in the same vessel,' on account of the same "neutral proprietors, and a sending forward for sale to the "mother country, or the colony."

This is so far from implying that landing and paying duties would, under all circumstances, be sufficient, that it evidently implies the contrary. Can it be said, for instance, that the charty-party of the ship being for an entire voyage from the colony to Europe, (which was the case of the Enoch,) is not a circumstance, which, in conjunction with those which are here specified, might, consistently with this opinion, repel the favourable presumptions arising from the landing and paying duties in America? If not, into what can this part of the opinion be resolved, but a mere specification of the evidence which, under given circumstances, might suffice to satisfy our Courts of Prize of the fair intent of the importer?

Supposing, however, that the language would fairly bear a different construction, I am still at a loss to discover what benefit the American neutralizers can plausibly claim from this opinion. They have landed their cargoes; but have they truly performed the other condition? *Have they paid the duties?*

The King's advocate, like the court to whose decision he alluded, had been led by fallacious evidence to suppose that the large duties imposed on West India produce in America were really paid in that country by the importers, whose case he was considering; and the consequence was, a reasonable presumption that the importer, who submitted to

that charge originally, meant to take the benefit of it by a sale in the neutral country. But it turns out on better information, that the duties are not paid—that a trifling per centage on them only, is received by the American custom-house. If the opinion therefore had meant to give a substantive effect to the payment of duties, still the trade in question can derive no sanction from this opinion; and it is preposterous to claim on this ground, any right of previous notice, before these fraudulent transactions can be equitably treated as illegal.

68, (D).

This contrivance has in fact already become very common: but it has been a still more frequent precaution, to prepare the means of sustaining, in case of need, that pretence which was found effectual in the case of the Eagle, — Weeks, (see supra, 56), by offering the vessels and cargoes for sale by public advertisement. Whoever will take the pains to examine the files of American newspapers published in the last summer, may find that the sale of a newly-arrived West Indiaman, with her entire cargo, had in that country, however strange it may seem to the English merchant, become ostensibly a very common transaction. Unluckily, in a late case at the Admiralty, newspapers were found on board, which offered the vessel and cargo for sale, after the date of those documents which were made up for the voyage to Europe.

I understand that in the insurances on the latter branch of these voyages, it is now beginning to be customary, to warrant that the goods were not imported into America on account of the assured.

71, (E).

The author was not surprised to find that this great general fact, however notorious in our Prize Courts, and among the officers of our navy, excited astonishment in the minds of many of his readers. It has been the fate of the great subject of our maritime system in general, as well as the most important facts that relate to it, to be misrepresented abroad, and misunderstood and neglected at home.

In 1805, the British public was surprised to hear that there was not a hostile mercantile flag, a few coasters excepted, to be found on the ocean; yet so early as 1799, the fact was officially and publicly avowed, and in a less qualified way by our enemies themselves; for in an address of the Executive Directory of France to the Council of Five Hundred, in January, 1799, they distinctly stated, that not a single French ship had passed the Sound in the whole of the preceding year; and that there was not at that period a single merchant vessel navigating under their flag.

" *Dans la dernier état publié par les gazettes du Nord du* " *nombre des vaisseaux qui ont passé le Sund, depuis un an, on* " *ne trouve pas un seul navire Francais.*"

And again, " *Et quand il est malheureusement trop vrai, qu'il* " *n'ya pas un seul vaisseau merchand, naviguant sous pavillon* " *Francais, quel autre moyen d'exportation avons nous, que* " *l'emploi des vaisseaux neutres ?*" *Code des Prises*, Tom. II. p. 385.—See also a valuable note in the Appendix to Dr. Robinson's 2d vol. of Admiralty Reports, p. 378, to which I am indebted for this extract.

74, (F).

Such is the flourishing state of the trade of Antwerp, that in the course of 1804 no fewer than 2142 vessels were entered inwards: and during the three first quarters only of the last

year, the trade had increased so much, that the number entered was 2513. Supposing the last quarter equally productive, the whole number of vessels during 1805 would be 3350. See these facts extracted from the Dutch Gazettes in the London Newspapers of October 30, 1805.

75, (G).

The following extract of a letter intercepted in its passage from the Havannah to St. Croix, will furnish some means of estimating the present importance of Cuba as a sugar colony. The letter is dated the 2d April, 1805, and is addressed by a Spanish house at the Havannah, to its confidential agent in the Danish Islands.

"Our products are uncommonly abundant. *Our present crop will exceed* 300,000 *Boxes,* and since the beginning of the year, the exportation has not exceeded 35,000 boxes. *In a word we estimate our crop will amount to* 12 *millions of dollars.*"

[*Extract of letter from the firm of* Widow Poey *and* Hernandez, *to a merchant in St. Croix, found on board the* Charles, Stiles, master, a prize to H. M. S. L'Epervier, condemned at Tortola. The papers are now in the Registry of the Appellate Jurisdiction at Doctors' Commons.]

The average weight of boxes of sugar from the Havannah is about 4 cwt. 1 quarter English: 300,000 boxes therefore are about 1,275,000 cwt. and this it appears was the estimated produce of Cuba, in the present year, in sugar alone. Its other products, especially indigo and cotton, though comparatively small, are by no means inconsiderable; and its agriculture in general is very rapidly increasing.

But the *quality* of the produce is also to be considered: and here Jamaica is very inferior to its formidable neighbour.

The sugar exported from Cuba is principally clayed, by which process it becomes more valuable than brown sugar of the same growth, by about twenty per cent.

Even the brown sugar however of Cuba is superior in quality to that of Jamaica. The respective prices of each, and of other sugars, in the Hambro', Antwerp, and Amsterdam markets in August last, were as follows:

Prices Current of Sugar in August, 1805.

HAMBURGH.	AMSTERDAM.	ANTWERP.
Havannah.	Havannah.	Havannah.
White ...17 to 19	White ....$17\frac{1}{2}$ to $22\frac{1}{4}$	White 66 to 68
Brown ..$13\frac{1}{2}$ to 15	Brown ....$15\frac{1}{2}$ to 18	Brown 52
Jamaica ...12 to 14	English Colonies 14 to $17\frac{3}{4}$	Jamaica ..50 to 47
Martinique.	Martinique.	Martiniq. 46 to 43
Brown ...$11\frac{1}{4}$ to $14\frac{1}{2}$	Brown ....$13\frac{1}{2}$ to $17\frac{1}{2}$	Bengal ...50 to 60
St. Domingo 13 to $14\frac{1}{2}$	Danish Colonies $13\frac{1}{2}$ to $17\frac{1}{2}$	
Surinam ...11 to $13\frac{1}{2}$	East India ......15 to $18\frac{1}{2}$	The above are in guilders per 100 lb. duties and charges included.
East India 12 to 16		
These prices are groots banco per lb.	These are in groots per lb. Dutch.	

From these prices it appears, that the brown sugar of Cuba not only exceeds that of Jamaica in quality, very considerably, but has every where a preference to all other produce of the same description, that of the East Indies excepted.

The following extract of another intercepted letter from a respectable house at New York, dated the 16th September last, may serve like many others which might be cited, to shew how these valuable crops of Cuba are disposed of.

The letter is addressed to an eminent house at Amsterdam, and after giving advice of a shipment of 593 boxes of Havannah sugar to that house, imported, as usual, through America, the writers add—" The importation of sugar from the " Havannah is immense, and will continue while the port re- " mains open. We may expect large supplies of coffee " during the winter, and next spring, *all of which will go to* " *Europe, and principally to your port.*" (Letter No. 22, found on board the Ambition, Freeman, master, lately under adjudication in the High Court of Admiralty.)

Among the many advantages which this great Island now possesses over its British rivals, may be reckoned one, of which every colonist and merchant will feel the great importance—the reduction of the rate of exchange with Europe.

It appears by an intercepted letter from a merchant at the Havannah to his correspondent at Cadiz, of the 3d of August last, that the premium on the best bills of exchange upon Spain, had then fallen to 4 per cent. At the same time bills drawn on England from Jamaica bore a premium of about 7½ per cent. and the exchange at our Windward and Leeward Islands, as far as it is capable of being averaged, was above £190. for £100. sterling; whereas the par is £175. Last war our colonists sometimes could not find good bills to purchase at 200 per cent. and the premium at Jamaica was as high as 10 or 12 per cent. But the same letter from which I cite the fact, gives the true and natural cause of this new advantage of Spanish colonial commerce. "The person "who gave me this bill of exchange (a bill for 15,764 dollars bought at the above premium, which he encloses) en- "joys the highest credit and reputation in this place. *He "has remitted large parcels of sugar through the channel of the "Americans to the drawee thereof, and has just received intelli- "gence of the departure from Boston for Santander of about three "thousand five hundred boxes of sugar by different vessels*; for "which reason I had no difficulty in delivering him your "money, &c." (Letter found on board the *Unanimity, Wilson,* master, brought into port in November last, and examined in the High Court of Admiralty, No. 44.)

This bill was drawn on a house at Madrid, and payable at fifty days after sight; whereas bills for such large sums are never drawn from our Islands at less than ninety days, and are commonly at much longer sights. Such a bill, therefore, would have borne an extra premium at Jamaica, or St. Kitt's.

81, (H).

The premiums of insurance have advanced very considerably since the period referred to in this work, not only in consequence of an apprehension that this country will not in future submit to the gross wrongs which she has so long patiently endured; but also from the season of the year, by which the sea risques are of course greatly increased. It is not easy therefore to determine what part of the advance may fairly be ascribed to the cause first assigned; but I understand, that policies on ships bound from North America to Europe with produce of the hostile colonies, which in August last were made at 3, and last winter at 6 per cent. have lately borne a premium of 10.

It is highly curious and important, to compare by this decisive standard of insurance, the effect of our hostilities in the present war, with that of the wise and energetic measures of the war 1756, when the great principle that I contend for was fully asserted; and this comparison I have been enabled, through the courtesy of a friend, to make, since the first edition of this work was published.

A little French tract has been put into my hands, which was published in 1779, and is intitled "CONSIDERATIONS SUR L'ADMISSION DES NAVIRES NEUTRES AUX COLONIES FRANÇOISES DE L'AMERIQUE EN TEMS DE GUERRE;" it is avowedly a mere transcript, the addition of a few notes excepted, of a manuscript memorial written during the war 1756; the object of which, was to dissuade the French government from persisting in an experiment which had been found ineffectual, and in many respects pernicious to France herself.

It must be confessed, that the author gives very powerful reasons in support of his advice; but on what do they chiefly turn? Why, on the facts, that Great Britain had not respected the neutral flags, when engaged in conducting the

colonial trade, but had seized and condemned them, with their cargoes; that the neutral powers had not thought fit to quarrel with Great Britain for this proceeding; and that in consequence, the carriage in neutral bottoms had become more hazardous and expensive, than the carriage in ships openly navigated under the flag of France.

The author, in reply to an antagonist who had urged a supposed saving in the premiums of insurance, in favour of the neutralising plan, has this important passage:—" On " suppose, je ne sais pourquoi, l'assurance sur les navires " François a 80 pour cent; mais dans le tems que l'auteur " ecrivoit, les assurances se faisoient couramment à 50 pour " cent; et depuis, sur les seules espérances d'une protection " prochaine" (he alludes to a design of furnishing convoys) " elles baissérent à 35 et à 33 pour cent. Les deux chambres " formées à Bourdeaux depuis la guerre, firent à cette époque " pour plusieurs millions d'assurance à ce prix: ce ne fut " que quand on vit que tout étoit désespéré du côté de la " protection, que les primes montérent successivement à 40, " 45, 50, et jusqu'à 60 et 65 pour cent; mais elles ne pas- " sérent point ce dernier prix, pour les navires qu'on savoit " ne pas tarder d'arriver, et qui, n'avoient que les risques " ordinaires à courir. Il ne semble donc que dans un pareil " calcul, il n'étoit pas possible d'établir la prime au-dessus " de 50 pour cent, au lieu de 80, ce qui fait une difference " de 30 pour cent.

" 2º On établit la prime sur les vaisseaux étrangers à 15 " pour cent. On sait qu'elle n'a été a ce prix, *qu'autant de " tems que les Anglois ne prenoient point les neutres, ce qui n'a " pas été bien long; mais aussi-tôt qu'ils ont commencé à les ar- " réter, les primes ont monté successivement à 25, 30, 35, jusqu'à " 60 pour cent; et enfin on n'a trouvé à les faire assurer à aucun " prix, et beaucoup moins que les vaisseaux François,*" p. 48, 49.

We obtain here, from this French author and his opponent, two very striking facts: 1st, That the maritime superiority

of this country, such as it was, even in the war of 1756, was so destructive to the commerce of our enemies, as to oblige them to pay in the colonial trade 60 per cent. for insurance on common risques, and 80 in extraordinary cases. 2d, The expedient to which they in consequence resorted, became, by the firm assertion of our belligerent rights, so ineffectual, that the premium soon again rose to the same rates, till neither in French or neutral bottoms, could they obtain any insurance at all.

Let these facts be compared with the effects of the same stratagem in the late and present war, when unresisted on the part of Great Britain. What would these French politicians have said, if assured that the measure in dispute would reduce the premium of war insurance in the same trade *to 6 per cent.* and to a lower rate even than that to which their triumphant enemies were subject? There would have been an end at once of the controversy; and they would have united to applaud the happy new expedient, which, as this cotemporary writer tells us, *"fut annoncè et exaltè, avec une "chaleur et un enthousiasme, qui n'ont peutètre jamais eu "d'exemple."*

91, (I).

It was stated in the first edition, that a large part of all the property engaged in the collusive commerce carried on with the hostile colonies, by means of the double voyages, was insured in England.

This, the Author finds, has been objected to; being understood as an assertion that not only "the greater part," but "nearly the whole," was so insured. Such a construction exceeds the sense which was meant to be conveyed; and seems also to exceed the natural import of the words "a large part;" but perhaps the use of any comparative or fractional terms

whatever was incorrect, since the proportion which the part of this commerce so insured bears to the whole, cannot be stated, both the quantities being unknown, and incapable of being, by any means in the author's power, ascertained.

It may be true, that more of the property engaged in this trade is insured in America, than in England.—That a large part of it is insured in that country, the Author well knows, and did not withhold that fact. (See first edition 83, 4, and present edition, 86, 7). The American underwriters found it, no doubt, so profitable a subject of adventure, even at the low premiums of the last summer, that they chose to rival our merchants largely, in this, as well as in other speculations; and the Author heartily wishes they had taken the whole of it.——It is enough for his argument, and too much for his satisfaction, that the British underwriters have certainly partaken very freely of these insurances, and added to them a secret release of the neutral warranty.

The policies negotiated at Lloyd's, on ships and cargoes in this trade, but more especially on the cargoes, and in the European branch of the voyage, have been very numerous; and their collective value, during the last and present war, has been immense; but none of the Author's conclusions depend at all, either on the relative or positive amount of these insurances; and therefore he has, in the present edition, wholly omitted the wordsin question, without the substitution of any others in their stead.

102, (K).

In this comparative estimate of the value of the imports and exports of the sugar colonies, the differences in respect of the state of society and manners, between the foreign and British islands ought to be considered. If the estimate were applied only to the British sugar islands, a much greater balance in favour of the exports ought, I conceive, to be

stated, and in the Dutch agricultural colonies the case was not very different: but the imports from Europe, and during the last and present war, from America too, into the French islands, and into Cuba, have borne a much larger proportion in value to the exports, than is common in the West India trade.—The latter, however, are every where vastly superior to the former.

108, (L).

By late accounts from the Havannah it appears, that sugar and other produce were selling there in July and August last at such prices, that the American merchants could not purchase to sell again in their own country, without sustaining a loss.—Their genuine trade would have been ruined by excess of competition therefore, if some check had not been given to the facility and safety of the collusive double voyages.

Indeed the fact stated as to the rate of exchange in note G, supra, seems a sufficient proof that genuine neutral trade could have little encouragement; for Spaniards, shipping on their own account, under cover of neutral names, could, as we have seen, not only obtain credit on the score of their consignments, but in drawing on the funds which they so remitted to the mother country, could afford to sell their bills at the low premium of four per cent.

If the author rightly remembers the true principles of that difficult and intricate subject, "the course of exchange," as he once learnt them from Mr. Thornton's valuable Treatise on Paper Credit, this price of Spanish bills on Madrid, shews that the means of remitting mercantile commodities on Spanish account to Spain, were cheap and copious; and if so, the real neutral merchant could scarcely expect to buy to much advantage from the merchants or planters of Cuba.

114, (M).

It is perhaps worthy of remark, that the European goods which were to be received in pursuance of this contract, and which were in consequence shipped from neutral ports in Europe, for La Guayra and other ports in South America, were all continental manufactures, and such as are the most dangerous rivals of our own in the colonies of Spain. Great progress, it is to be feared, has at length been made towards the execution of a plan openly avowed by the Spanish government during the last and present war; that of wholly excluding our linens, cottons, and other manufactures from the ports of its colonies, while articles the fittest for supplanting them, are allowed to be imported freely in neutral vessels.—In the confidential letter from which an extract has already been given in note G, the Spanish writers at the Havannah inform their correspondent at a neutral island, that their port is now opened for the importation of dry goods, and mention the articles which may advantageously be sent for the consumption of Cuba—" German linens (say they) are " still in demand, and command quick sales."—Other articles are mentioned, but not a word of any British manufactures.

121, (N).

Certificates of naturalization are often produced by our seamen, which they admit to be fictitious, and which have been given to them in America, by the landlords of the public-houses which they frequent in the ports of that country, or by the companions they meet in such places—When sold, the price is perhaps a measure of ale, or of grog, or some equally paltry consideration in money.—The instrument imports an oath, but no oath is in general taken.—Sometimes

the name of some other seaman is erased from a real certificate, which the true owner can renew at pleasure, and that of the English stranger inserted in its stead; and sometimes, no doubt, the whole instrument is forged. These practices are quite notorious.

167, (O).

A fuller or stronger confirmation of this statement cannot be desired, than is contained in the valuable little French tract written during the war 1756, from which an extract has already been given (see note H supra). These are the author's words: " L'histoire ne fournit aucun exemple d'une
" nation qui ait cédé l'exploitation de son commerce et de
" ses colonies, sous aucun prétexte; pas même de la guerre
" la plus malheureuse. Espagnols, Portugais, Danois, An-
" glois, Hollandois, tous ont été unanimes sur cet objet im-
" portant d'administration, qui ne pourroit raisonnablement
" souffrir d'exception, qu'autant, qu'il y auroit reciprocité,
" et que la liberté seroit indéfinie pour tous les peuples qu
" possedent des colonies." (p. 79.)

Perhaps the reader may suppose, that France having, since this tract was written, thrice reversed this ancient and universal maxim of policy, to suit her convenience in time of war, now looks on the maxim itself as erroneous, or of little importance; and would not be very unwilling to dismiss it from her pacific system; at least, if other colonizing powers would concur in such liberality. But our modern enemies have no idea of countenancing their neutral accomplices, or vindicating their own consistency or moderation, at any such price. Their attachment to the principle of the colonial monopoly is as strong, nay stronger, than ever. They would not now admit even that exception, which the champion of the principle from whom the above extract is taken, was willing

to allow. They would not agree to throw open their colonial trade in time of peace to other nations, if every other colonizing power in Europe, were willing to grant a reciprocal freedom to them. Nay they would not do it, at the price of a commercial confederacy against Great Britain.

If these propositions seem strange, let the reader attend to the following extracts from the famous work of *M. Hauterive*, and be convinced that, however strange, they are true. In that official publication, for such, though not openly avowed, it certainly was, *M. Hauterive*, the French under secretary of state in the year 1800, developed the system and the views which his government had then adopted, and in which it wished all the nations on the continent to concur, for the attainment of "that liberty and equality" on the seas, about which Buonaparte has ever since continued to rave: in other words, for ruining the commerce and marine of this country. The conduct and the language of the Usurper concur to demonstrate, that at this moment he still adheres to the views opened by *Hauterive;* and still hopes, notwithstanding the able refutation of that libellous and mendacious work by the pen of *M. Gentz*, that the continental powers may be persuaded to adopt them. Let us see then what these views are in respect of the colonial trade.

"*All those evils,*" (i. e. the evils which the author ascribes to the maritime preponderance of England) "ought to be "terminated by two regulations, which should *form the* "*maritime law of nations for the nineteenth century.*"

M. Hauterive's first remedy, is the abolition of maritime capture, in respect of property passing under the neutral flags. His second, is the repeal of all prohibitory laws by which commerce is restrained, in time of peace; but with an express exception of the *coasting trade, and of the colonial monopoly.* He shall speak, however, for himself.

"1st. Cruizing is abolished. In time of war, the sove-

"reignty of territory is transferred, with all its rights, to "the flags of nations which take no part in the war.

"2d. In time of peace, the navigation from one people "to another is subject to no prohibitory laws: this regula-"tion should have but one exception, *that which relates to* "*coasting from one port to another belonging to the same nation,* "*and the navigation between the colonies and their mother coun-*"*try.*" (*De L'Etat de la France, a la Fin de l'An* viii. Goldsmith's translation p. 163.)

Here we see that this French statesman, and the government by which he was employed, did not chuse to relinquish the colonial monopoly in time of peace, even in consideration of absolute and unlimited protection to their commerce under the neutral flags in time of war; nor even as part of a new system which was to ruin the power of England.

His scheme, in general, is a federal association of commercial states, who are in favour of each other, to throw down the pale of their prohibitory laws, and admit, among the members of this commercial league, a perfect freedom of trade, excluding therefrom only Great Britain, and any other powers that may be obstinate enough to adhere to their ancient restrictions, till we shall be compelled to repeal our navigation laws, and accede to the new "*maritime code of the nineteenth century.*"

But though it seems, that in favour of this federal union, he would throw open even the coasting trade, he would still cleave fast to the darling colonial monopoly. "*I except,*" he says, "*from this law of reciprocity, the navigation between* "*the colonies and the mother country; which,* IN THE BEST OF "TIMES, *ought to continue privileged; but distant or foreign* "*importations, and the coasting, as well as exportation, ought not* "*to be subjected to greater fetters for allied commerce, than for* "*national commerce.*" (Same translation, p. 172—see also Mr. Cobbett's Annual Register, 1 vol. p. 234, &c. in the account

of a speech of Dr. Lawrence, who pointed out these and other important passages to the notice of parliament, in 1802.)

It is to be hoped, that Mr. Hauterive's "*best of times*" will never arrive; but should that golden age, the reign of the "new maritime code of the nineteenth century," be realised, we are here plainly told what will be the consequence.—France, in clothing herself with the colonial spoils of England, will reserve to herself, in time of peace, that little *peculium* out of the general community of trade; but in time of war, should she still find a maritime enemy, will again consign it to the safe-keeping of the neutral flag. The colonial ports, like the temple of Janus, will still open and shut at every alternation of war and peace; or, to borrow an illustration from the French author first quoted, the colonial trade will be like a tennis ball, which Frenchmen and foreigners will alternately keep up. "*C'est qu' à chaque révolution de* "*guerre, le commerce des colonies passe aux négocians étrangers,* "*pour revenir à chaque revolution de paix aux négocians François,* "*comme une balle de jeu de paume revient au joueur,*" p. 78. This, the reader is requested to observe, was the original conception of the plan in the war of 1756.

196, (P).

Many of the enemy merchants are now become too provident to lose the amount of the neutralizing commissions, by employing strangers as their agents. It has of late been a very ordinary practice with them, to send a partner, or a relation, to the neutral country to which they trade, where he soon becomes, according to the indulgent rules of our prize courts, a neutral subject, either by domicil or naturalization, or both; and then acts as general agent for the house with which he is connected in the belligerent state. A great many of the most eminent neutralizers in America, are persons of this de-

scription; and some of them who had actually removed with their whole property to their native countries, during the last short-lived peace, have again modestly returned, for the benefit of neutral character, to the United States.

199, (Q).

The example of the neutral powers of Europe, in the war 1756, may here furnish a useful precedent for America; and the reasons of their conduct, as given by the intelligent French writer before quoted, so exactly agree with the ideas suggested in this work, that the Author cannot forbear quoting the passage. Speaking of an expectation which the friends of the new stratagem had entertained, that if England resisted the innovation by capturing the neutral carriers, their governments would quarrel with her for that proceeding, he says—" Il faut bien aimer à se faire illusion pour se " persuader pareille chose. On le sait, les Anglois ont pris " indistinctement tous les vaisseaux qu' ils ont rencontrés, " et toute l'Europe les a vu faire sans s'en mettre en peine. " Mais pouvoit-on l' imaginer autrement? Quelle appa- " rence, en effet, que des Etats qui ont de si grands intérêts " à concilier, et tant de mesures à garder, se determinassent " à entrer dans une guerre toujours ruineuse, *pour soutenir* " *quelques-uns de leurs negocians, qui auroient entrepris de faire* " *un commerce prohibé; commerce que ces mêmes Etats ne pou-* " *voient regarder, quelqu' avantageux qu'il fut, que comme pré-* " *caire et momentané, pour leurs sujets!*" p. 26.

201, (R).

It was stated in the first edition, that the Americans could, before the commencement or contemplation of the last war, import into certain free ports of the French West India islands, their native provisions and lumber; but this admis-

sion, since it had no reference to the irregular proceedings in those islands, which took place in 1792, (see supra 30, 31) was too extensive. The liberty of trade at the French free ports, prior to those revolutionary changes, did not extend to the importation of provisions generally, but only to certain enumerated articles, among which *wheat flour,* the great staple of North America, was not included.

Some obscurity has hung upon the nature of this commercial intercourse in point of law, from the peculiar manner in which the subject has been regulated.

It has often been asserted on the part of America, that she was intitled by *treaty* to the trade she possessed with the French West India colonies before the war; but no treaty is to be found, that has any reference to the subject, except the general treaty of amity and commerce of February, 1778.

In the 30th article of this treaty, we find the following words: "His Majesty will also continue to the subjects of the "said States, the free ports which have been, and are open in "the French islands of America; of all which free ports the "said subjects of the United States shall enjoy the use agree-"able to the regulations which relate to them."

Two articles, which do not now appear in the treaty, were originally inserted in it, and agreed to by both parties; but were afterwards by mutual consent rescinded—They formed the 11th and 12th articles; and their effect was, an agreement by France, that no duty should ever be imposed on the exportation of molasses sold in her islands to subjects of the United States; in consideration of which it was stipulated on the part of the latter, that no duties *on any kind of merchandize whatever,* which the subjects of France should purchase in America for the use of their sugar colonies, should ever be imposed on the exportation thereof from the American ports.

The enormous inequality of this agreement, was no doubt the cause that it gave discontent in America, and that France

at that very critical conjuncture did not think it prudent to insist on the advantage which she had gained; the two articles therefore were cancelled in the following September, and the treaty was published, with a new enumeration of the articles as they at present appear. As it now stands, the only stipulations respecting the West India trade, were plainly nugatory, since it depended on one of the contracting parties alone, to give to them whatever effect he thought fit, or to render them wholly fruitless.

The clause in question of course could not be construed to disable France from regulating the general trade of her own free ports at her discretion; nor was such a strange construction ever contended for on the part of America. On the contrary, the royal orders of the court of Versailles, made during pleasure, continued, without complaint from the government of the United States, to regulate and alter the limited trade of the free ports, from the time of this treaty to the revolution, as well as since that period. Arrets of 1784 and 1785 contained the principal regulations; and it does not appear that the subjects of the United States ever had any privilege beyond other foreigners; except that from the nature of the commodities allowed to be imported, they alone perhaps, among all the nations now neutral, were in possession of the free-port trade.

This commerce therefore, narrowly limited as it was, rested on a voluntary and precarious licence; when the war came and opened every port in the French colonies, to every neutral nation.

On the commencement of the last war, *Citizen Genet*, the ambassador from the French revolutionary government to America, obligingly proposed, not only to remedy the former defect, but instead of a paltry trade to the free ports, to give to the United States, by treaty, a full and perpetual admission into all the colonial ports of the republic; provided they would in return enter into such intimate federal engage-

ments with her, as he did not scruple to liken to *the family compact*, and one of the avowed objects of which new compact was "*the breaking up the colonial and monopolizing systems "of all nations.*"

The American government had too much wisdom and justice to enter into the proffered league; but offered to negotiate a new commercial treaty; which the rulers of France and their successors, finding the United States deaf to their fraternal overtures, thought it best to decline.

From this explanation, added to the facts in the text, it will appear, that the claim which America and other neutral states might speciously set up to a qualification of the rule of the war 1756, on the score of relaxations, prior to the late or present war, in the colonial system of France, is of a very narrow extent; and far short of what the author suggested as a proper subject of amicable concession on the part of this country.

Waving the consideration, that the special privileges of free ports, cannot reasonably be regarded as relaxations of the colonial monopoly in general, so as at all to affect the principle in question, in respect of places not within the limits of those privileged districts; the utmost latitude of the trade allowed in those free ports to foreigners, was the exportation of rum, taffia, and molasses, and the importation of enumerated articles; and the latter, as has been observed, did not include the grand staple of North America, flour, in finding a market, for which, the landholders of that country are more largely interested, perhaps, than in all the rest of the commerce that passes under their flag.

The enumerated articles of importation were, wood or lumber, pit coal, live animals, fatted beef, salted fish, rice, Indian corn, vegetables, green hides, peltry, turpentine, and tar; but the last ordinance, that of 1785, materially abridged the commerce in one of the chief articles, salted fish, by imposing heavy duties on that commodity when imported by foreign-

ers, and giving bounties on its importation from the national fisheries; which, together, would have amounted to a prohibition of the former, if natives could have fully supplied the demand.

As to the principal staples of the West Indies, sugar, coffee, cotton, &c. the privileges even of the free ports, in no degree extended to them; nor were they ever at any time exported in time of peace in foreign bottoms, unless by smugglers. So far, we see, were the United States from raising their views to a trade in these valuable articles, that when they agreed to give an unlimited and perpetual right of exportation from their ports to the French colonists, duty free, in respect of all merchandize whatsoever, they bargained only in return for the free exportation of molasses.

208 and 213, (S).

It would be difficult to notice without ridicule, if the gravity of the subject, and respect for the government and people of the United States, did not restrain all risible emotions, a menace to which the neutralisers have lately resorted.

These French and Spanish agents gravely tell us, that if we do not acquiesce in their own injurious pretensions, "the "government of America will *prohibit the exportation of* "*flour and other provisions to the British West Indies, and starve* "*our sugar colonies.*"

Asking pardon of that wise and highly respectable government, for admitting, for argument's sake, the supposition of such a preposterous attempt, how, I would ask these gentlemen, do they hope to make the prohibition in any degree effectual?

America, during the last war, indignant, not at imaginary

wrongs, not at the temperate resistance of her own unneutral conduct, but at gross, unprovoked, insulting, multiplied injuries from France, interdicted all commerce whatever with that country and its colonies, armed at great expence to obtain redress, commenced even some actual hostilities, and in every part of the United States the public feelings heartily engaged in the quarrel; yet the prohibitory law was widely and openly evaded, and the French islands were perhaps never more copiously supplied with American provisions, carried in American bottoms. Their ships cleared out for St. Bartholomew and ran into Guadaloupe; they cleared out for Baracoa in Cuba, or Jamaica, and ran into the ports of St. Domingo, even into ports occupied by *Rigaud*, the most furious partisan of the French government. They returned to America with cargoes shipped in those colonies, disguising the contraband transaction, in all cases, only by the flimsiest veils.

These facts are sufficiently attested by the records of our Court of Appeals in Prize Causes; for great numbers of these smugglers were captured by our ships of war, from an opinion that, on account of the inchoate hostilities between the United States and France, they were lawful prize, as being engaged in a trade with a common enemy.

These alarmists might be further posed by another case, still more closely applicable in its circumstances, to that with which they threaten us.

The countries now composing the United States, were once hostile to our sugar islands, and the direct commercial intercourse between these enemies was cut off by mutual prohibitions. Yet the latter were not starved. The advocates of the revolted colonies then predicted that dreadful consequence, but were wholly disappointed. The prices of American provisions and lumber, were not even advanced to the same dearth which they have attained during the last and present war. Let it be observed too, that at that period our own

laws rigidly excluded the direct trade in question, and were well inforced, but the neutral islands were the convenient magazines in which the American cargoes were deposited, and from which our planters were supplied.

In that unhappy case, the possibility of which is for the argument's sake supposed, the same *entrepôts* would be an effectual resource; and the supply of our islands would be restored to the very same channels, through which, by the effects of the American intercourse act, it now always flows in time of peace. But this is said only on the supposition that his Majesty's government might not choose to admit of the trade in hostile bottoms. Should our ports be opened to them, with safe conducts, the vessels of the United States would bring in their native commodities as freely as at this moment, in spite of war and prohibitions. The only difference would be, that our planters would be much more cheaply supplied than at present; for in the case supposed, the trade to the hostile colonies would be in great measure cut off by our cruizers, and the produce of the United States therefore would find scarcely any other safe West India markets than our own. One of the many disadvantages which our colonies sustain in the present state of things, is that the permission to ship sugar, coffee, and cotton, naturally induces the neutrals to prefer the ports of our enemies to those of our own islands, by which the former obtain a pre-emption of the outward cargoes, and their price in the latter is raised.

The menace to which these remarks are opposed, would in truth have far more terrors for the American farmers than for our own planters, were it capable of being carried into effect. To tell that numerous and important class of American citizens, that they should not send their produce to market, would be like bidding them " hold their breath and die."

And under what circumstances, is the American government supposed to adopt and enforce so strong a measure? It must be at a juncture the most difficult and alarm-

ing that can be imagined; at a time when, by the ruin of its commerce and its commercial revenue (infallible consequences of a war with this country) it would have no resources for the great and extraordinary demands of maritime war, but very heavy interior taxation.

By the Report of the Secretary of the Treasury of the United States to Congress in December 1801, the public revenue of every description was estimated annually to produce from 1802 to 1809, inclusively, as follows:—

	Dollars.
Duties on merchandize and tonnage	9,500,000
Internal duties (stamps excepted)	650,000
Proceeds of the sales of public lands	400,000
Duties on postage	50,000
	10,600,000
The ordinary establishment was estimated at *per annum*	3,500,000
Which would leave a surplus of	7,100,000

dollars for the payment of interest and reduction of the principal of the public debt.

From these premises it appears, that external commerce contributes more than nine-tenths of the whole revenue of the country; and that if this source of supply were cut off, all the present internal duties, with the aid of the proceeds of public lands, would be so far from sufficing to keep down the interest of the subsisting debt, that they would not satisfy one third of the expences of the peace establishment: there would remain a *deficit* of 2,400,000 dollars to be provided for, beyond the interest of the public debt, before any war fund could be raised.

Now that the exterior commerce of America, if not wholly cut off, would be soon reduced to a very low ebb by a war with Great Britain, cannot be doubted: internal taxes therefore would be necessary to supply the loss of revenue, and to

raise from the stocks a navy capable of annoying the commerce of this country, as well as to provide for the other expensive services of war. Let it be considered, that under the present system, and from its natural effects, we are obliged to convoy even now all our trade on the Atlantic, by a force which ships of the line only can assail. America therefore could hope to annoy us only by means of a public marine, and consequently very heavy burthens must be laid on a people, who in the interior are poor in every thing but landed possessions, who do not now contribute to the state, the postage duties included, above 700,000 dollars, and among whom a small excise duty, a few years ago, produced a serious rebellion.

The author is far indeed from wishing to depreciate the power, or the public spirit of the American people; for whom, as a nation, he feels great predilection and esteem. Their strength is of the best kind; it is defensive and internal; and their spirit, he doubts not, will, like that of the race from which they sprung, rise superior to every difficulty, when the public safety or honour requires its exertion: but the self-interested men, who would push them into an unjust quarrel, must not be suffered, without contradiction, to magnify by these preposterous threats, their powers of annoyance, in the hope of inflaming one great people, and intimidating another.

These idle menaces seemed the more to demand notice, because they have lately been sent to our newspapers in the form of an extract from an American print, with the imposing title of "*American State Paper*" in front, and with a scandalous insinuation, that the paper was published under the sanction of the executive government of the United States. (See the London papers of Dec. the 16th).

There can scarcely be a fouler libel on that very respectable government, than to ascribe to it such a senseless and insolent composition as this; which is plainly of French

manufacture, or else the work of some neutralizing French agent, who has caught the style of his employers.

The dignity, as well as wisdom of the American government insures to us, that if it saw cause of complaint or expostulation, the channel would not be a newspaper essay; nor the manner, the vague abuse, and absurd menaces, contained in this pretended "State Paper!" The subject of complaint would be better defined than by the old jargon of "lawless violence," &c. the great principles in controversy, would be calmly discussed, and an appeal would be made to our understanding and our justice; not to our avarice, and our fears.

FINIS.

C. WHITTINGHAM, *Printer*, Dean Street.